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BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

IN THE MATTER OF:)
)
SOLID WASTE FACILITY PERMIT)
PROCESS AND ISSUES WORKSHOP)
)

TRANSCRIPT OF PROCEEDINGS

August 9, 2000

9:30 A.M.

CIWMB Board Room
8800 Cal Center Drive
Sacramento, California

REPORTED BY:
Terri L. Emery,

1 SACRAMENTO, CALIFORNIA, AUGUST 9, 2000 - 9:36 A.M.

2 * * * * *

3 CHAIR MOULTON-PATTERSON: Thank you very much.

4 I'd like to welcome everyone to the second day of our

5 permit process and issue workshop, and I'd like to turn

6 it over to Ms. Julie Nauman.

7 MS. NAUMAN: Good morning, Madam Chair and Board
8 Members. Julie Nauman, Deputy Director of the Permitting
9 and Enforcement Division. Today is, as the Chair just
10 indicated, day two of our permit issue workshop.

11 I thought I would just take a few moments before
12 we talk about today's agenda to just review with you and
13 summarize both for your benefit and the benefit of the
14 audience what we did in our last workshop on July 11th.
15 In that workshop -- as you'll remember, in that workshop
16 we covered several process steps including the local
17 approval process which then led to a panel discussion on
18 noticing. We then reviewed the permit review process

19 with a panel discussion on the Permit Enforcement Policy,
20 which we refer to as the PEP policy.

21 We then had staff presentation and discussion
22 about application requirements and the LEA process
23 involved in preparing applications. In the panel
24 discussion we focused on one of the components and that
25 was the conformance with the Integrated Waste Management

1 Plans at the local level as it relates to the permit
2 process, and that led to a number of issues related to
3 the LEA process for preparation of applications to us
4 that we will continue discussing in our review today.

5 There were a couple of outcomes from our last
6 workshop that I just wanted to note for the record and
7 that was one, the Board indicated an interest in having
8 further discussion and examination of options relative to
9 the PEP policy, and we will be addressing that in our
10 first component today. Secondly, with respect to the
11 conformance issue after the panel discussion, staff
12 indicated that we will be bringing an item to the Board
13 at your August meeting to examine further options for
14 your consideration on that policy issue.

15 Focusing now on today's workshop, we'll be
16 following the same pattern that we utilized in our first

17 workshop with you and that is we will begin with issue
18 presentation and discussion with your staff, followed by
19 panel discussions. Once again, we're pleased to have the
20 participation of several representatives from the solid
21 waste management industry as well as from the Local
22 Enforcement Agency community participating with us on
23 each of our panels today.

24 At the end of each segment, and you'll note in
25 the schematic that we have here on today's agenda that at

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1 the end of each panel segment we've added a box called
2 "next steps" and we will at the end of each panel then
3 come back and have an opportunity for further discussion
4 with you to seek any direction you may wish to provide
5 your staff with respect to the issues that have been
6 discussed during that segment.

7 The three segments that we'll be dealing with
8 today are first, the PEP policy where staff will present
9 some options for your consideration. Secondly, we will
10 then go into a segment which will include review of
11 application requirements, again a continuation of last
12 workshop, a discussion of the Board review process,
13 discussion of the issues of completeness, correctness and
14 time lines which will then be followed by a panel
15 addressing completeness, correctness and time lines. The
16 final component will be a review of our long-term
17 violation policy. This relates primarily to long-term
18 gas violations, and this was an issue that was raised
19 many months ago by some Members asking for an opportunity
20 to further examine this policy.

21 So those are the three components and the
22 approach that will be taken today. Let me just make a
23 couple of comments about the schedule. We have this
24 workshop scheduled to run from 9:30 to about 4:30. We
25 may actually go until about 5:00, but we're planning to

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1 have a break mid-morning if all goes well in our
2 schedule. That should hit about 10:30 after the first
3 panel discussion on PEP. We'll come back then and get
4 into the Board review process, which will bring us to the
5 lunch hour which we have tentatively scheduled to run
6 from about 11:45 to 1:00. If we can reconvene as close
7 to 1:00 as possible, we'll then go into the next segment
8 on completeness, correctness and time lines with the
9 panel, looking at an afternoon break at approximately
10 2:30 or so. Then we'll finish up with the final segment
11 on long-term violations and then provide an opportunity
12 for general testimony.

13 With that, I think we're ready to begin unless
14 you have any questions about the day's process. Thank
15 you. I'll now turn it over to Mary Coyle for the
16 discussion on PEP.

17 CHAIR MOULTON-PATTERSON: Thank you, Ms. Nauman.

18 MS. COYLE: Good morning, Madam Chair and
19 Members. I'm Mary Coyle, Permitting and Inspection
20 Branch. I'll be providing some background regarding the
21 Permit Enforcement Policy, or PEP, and some options for
22 your consideration and introducing our panel who will be
23 discussing the topic. Some of the slides that you have
24 in your binder have been modified that I'll be using
25 today.

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1 Public Resources Code Section 44002 prohibits
2 the operation of any solid waste facility except as
3 authorized by the terms and conditions of a Solid Waste
4 Facility Permit. California Code of Regulations Section
5 18304 requires any LEA having knowledge of a permit
6 violation to issue a Notice and Order to the operator to
7 undertake activity to remedy the violation.

8 In 1987, the Board directed staff to address
9 outdated permits. The resulting program identified
10 reasons such as the older permits, those issued in 1978,
11 had descriptions that were not viewed as limits. Many of
12 those permits had wording that talked about the site was
13 currently receiving so many tons a day, it was currently
14 receiving such-and-such-type wastes, currently operating
15 under so-and-so hours or days and had no height limits or
16 the limits were not uniformly enforced.

17 Because of that direction, the Board adopted the
18 Permit Enforcement Policy in 1990, in November of 1990.
19 The policy makes clear that all permits have limits and
20 that exceeding those limits is a violation requiring an
21 enforcement action. The policy applies only to permit
22 violations.

23 The philosophy embedded in this policy is that
24 an LEA can write a Notice and Order allowing a facility
25 to continue violating a term and condition of its permit

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1 while applying for a permit revision. The Permit
2 Enforcement Policy is included in tab one of your binder.

3 Additionally, in 1997 an LEA advisory was issued
4 regarding the Board's enforcement policy. This advisory
5 was a guidance document which contains much of the same
6 wording as the proposed enforcement regulations you'll be
7 considering at your August board meeting. While it
8 discusses enforcement responsibilities and options for
9 both state minimum standard and permit violations, it
10 also contains the same philosophy of allowing the LEA to
11 write a Notice and Order allowing a facility to continue
12 violating a term and condition while applying for a
13 permit revision.

14 Between 1990 and 1999, approximately 101 Notice
15 and Orders were issued. Of those, we did a sample and
16 there were 77 percent that were issued for tonnage, 11
17 percent that had changes in hours of operation, 7 percent
18 that had no permit, 3 percent that had undergone an
19 expansion, and two that had a change in operation, went
20 from a cut and fill to an area fill.

21 This policy continues to be used by LEAs to
22 address problems with the pre-1988 permits and has also
23 been applied by some to address problems with facilities
24 after 1990.

25 At the last workshop you asked that staff come

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1 back to you at this workshop with some options for your
2 consideration. We have identified five options. The
3 first one is that there would be no change, we would
4 maintain the current policy; the second one is abolish
5 the current policy; third, further define the criteria
6 for enforcement agency consideration in determining
7 compliance time frames; four, keep the policy with
8 changes; five, make changes as directed by the Board.

9 Options one and two are straightforward and
10 option three, contained in PEP are five criteria that the
11 LEA is to consider in determining appropriate time frames
12 for compliance. These five criteria are included in
13 option three. This proposal would require the LEA to
14 include findings regarding these criteria in the Notice
15 and Order or the cover letter. These findings would be
16 required before issuing a Notice and Order. This option
17 further defines the existing criteria.

18 In option three, criteria one as stated in PEP,
19 a hardship or if other compelling reasons exist to
20 maintain the facility design or operation which caused
21 the permit violation. Examples of hardship are
22 compelling reason that we would like to further define is
23 if there's a change in the infrastructure such as a
24 landfill closure and that requires other landfills or
25 solid waste facilities in the area to accept that

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1 additional tonnage putting them over their permitted
2 tonnage. Another change would be a solar regional
3 facility in the jurisdiction or perhaps there's been
4 reduced revenues.

5 Criteria two as stated in PEP is all other waste
6 management alternatives are considered and none would
7 relieve the problem. Examples of alternatives would be
8 have they investigated a possibility of sending the waste
9 to another facility, is there ability to increase
10 recycling, and what did the LEA analyze as other
11 alternatives.

12 Criteria three as stated in PEP, the costs and
13 benefits to public health and environment were thoroughly
14 considered for each alternative such as indirect
15 environmental impacts from transportation, will the
16 facility remain in compliance with the operating
17 standards in allowing the change.

18 Criteria four, the facility design and operation
19 which caused the permit violation posed a threat to the
20 environment or to the public health and safety. An
21 example of that could be a landfill has undergone an
22 vertical expansion and it also has gas violations. That
23 vertical expansion could increase the gas generation
24 which would add to the gas violation. Some
25 considerations under this criteria could be are there

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1 CEQA limitations, have there been any complaints filed,
2 what is the inspection and violation history of the state
3 minimum standards, has there been a serious threat or
4 injury or death, have other agencies been consulted and
5 were there environmental concerns expressed by them.

6 The last criteria, five, is the facility design
7 and operation which caused the permit violation are
8 consistent with local planning objectives. If there's an
9 increase in tonnage, were those projections accounted for
10 in a Report of Facility Information, is the change
11 consistent with the General Plan and the County
12 Integrated Waste Management Plan, does it meet diversion
13 goals?

14 I know I covered that pretty fast. Were there
15 any questions on that, those options, criteria? If not,
16 I'll go into option four.

17 Option four includes several ways the policy
18 could be amended. If desired, the Board could choose one
19 of those or a combination of those suggestions.

20 Option four is keep with changes. The first
21 would be to clarify that PEP shall not be used to allow
22 for changes that have not occurred. The second could be
23 allow an LEA to issue a Notice and Order for permit
24 violations with the following time frames: The time
25 period for correction would be limited to 180 days, which

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1 is the time period -- current regulatory permit
2 processing time frame. If the permit is not revised in
3 the 180-day time period, the facility must revert to its
4 original terms and conditions. A public hearing could be
5 held to notify the public of the new terms and conditions
6 under these changes.

7 The third option under option four is to issue a
8 Notice and Order allowing the facility to operate under
9 the limits established by CEQA until the permit is
10 revised, however long this may take. An example of that
11 could be a facility has already had a CEQA document that
12 allows it to go to a higher limit in tonnage and for some
13 reason, either be public concern or other reasons, the
14 LEA issued a permit that allowed a lesser tonnage. So
15 that facility already had a CEQA review and environmental
16 consideration considered for a higher tonnage and perhaps
17 an LEA would be able under this option to write a Notice
18 and Order to allow them to increase to that tonnage
19 that's addressed in CEQA while they're pursuing a permit
20 revision.

21 The fifth option would be make any changes as
22 directed by the Board.

23 Now I'd like to introduce the panel members who
24 will be speaking to this issue and they will definitely
25 be stimulating the topic. They will address whether or

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1 not the Board should have a policy such as this, and if
2 appropriate, whether any of the options for changing the
3 policy are necessary. Those members are Patty Henshaw,
4 Supervising Waste Materials Specialist with Orange County
5 Environmental Health, the LEA. The second member is Norm
6 Christensen with Keller Canyon Landfill, Contra Costa
7 County, a BFI operation.

8 MS. HENSHAW: Do you need some statements from
9 us?

10 (Laughter)

11 MS. HENSHAW: Just to kind of augment what Mary
12 was saying, the original PEP policy was really written
13 for old permits, to help us get through a situation where
14 we needed updated permits and there were already --
15 basically the facilities were already in some type of
16 violation. And so that's really the goal of that policy
17 at that time and it worked really effective because it
18 took a long time to get all the permits updated and
19 through the process and so allowed us to have some
20 control over the operation by giving specific terms and
21 conditions in a stipulated order so we could really
22 monitor what was going on, why we went to the permitting
23 process, which sometimes can involve a lot of politics
24 and can slow down the process, but we still need to get
25 that trash to the landfills and disposed of. So it

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1 allowed us a lot of flexibility.

2 Since that time there has been an advisory,
3 Number 38, that goes into more of the different options
4 for enforcement actions, and actually I was on that
5 committee to help the Waste Board staff put out that
6 advisory. That's actually what we've been using recently
7 to help us in writing Notice and Orders on permit
8 situations.

9 But I think the concern here is that when Notice
10 and Orders or stipulated Notice and Orders are used now
11 to allow an existing facility to increase their tonnage
12 to meet some kind of need, and it kind of depends on the
13 situation whether that's critical in order to allow --
14 basically to allow the process to still go. We need to
15 get the trash off the streets and into the landfills and
16 sometimes there's situations that result that there's a
17 crisis that happens and we need to work and look at what
18 are the situations and what is needed in order to resolve
19 a problem, immediate crisis, and then work towards a
20 long-term solution. So that's just my summary on that.

21 CHAIR MOULTON-PATTERSON: Thank you.

22 BOARD MEMBER JONES: Can I ask a question?

23 CHAIR MOULTON-PATTERSON: Certainly.

24 Mr. Jones.

25 BOARD MEMBER JONES: As an LEA, if you had a

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1 facility that had been precluded from doing recycling
2 activity and your solid waste department directed
3 somebody to start recycling at that facility, would you
4 use a Notice and Order to allow the activity while they
5 updated the permit?

6 MS. HENSHAW: Well, each situation I have to
7 carefully look at all the particulars on like why this is
8 happening, was it just because they got a contract or was
9 it because there's an actual community need. So in the
10 past when all the transfer stations were adding MRFs, I
11 did put one facility on a Notice and Order to allow that
12 increased activity for recycling, they increased their
13 total tonnage, because it served the overall community.
14 So it was taken into consideration, what is the need and
15 then why is this necessary and is there other options,
16 and then yes, in certain situations it may be needed in
17 order to serve the community.

18 It depends on whether it's just a matter of --
19 I've had a situation where I denied an operator that
20 option because they went out for bid, they got the bid
21 but they didn't have the facility to meet the contract
22 they just got. So it was like well, you should have
23 taken that into consideration before you made the bid.
24 It kind of depends on what is going on that got that
25 increase.

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1 CHAIR MOULTON-PATTERSON: Any other questions?

2 Okay. Thank you.

3 MR. CHRISTENSEN: As an operator, I would like
4 to say we support the Notice and Order policy as it is or
5 as it may be amended. We think it provides for each
6 individual case to be looked at on a case-by-case basis
7 and provides for some control flexibility.

8 A couple of examples recently where this might
9 have been handy, the Solid Waste Facilities Permit is the
10 last permit generally obtained and it is generally the
11 most restrictive in that it takes into account all your
12 other entitlements and pulls out the most restrictive
13 limits in those.

14 An example would be for the recent case at
15 Keller Canyon. We had an EIR that provided for 3500 tons
16 per day. The land use permit provided for 3500 tons per
17 day. The Water Board permit provided for 3500 tons per
18 day. However, when the Air Board permit was originally
19 issued, it was for 2750 tons per day. So the Solid Waste
20 Facilities Permit was issued for 2750 tons per day, which
21 was the most restrictive.

22 Generally you don't address your Solid Waste
23 Facilities Permit changes until you really need them, and
24 we had a case where we went through an initial study, and
25 this was the Napa waste, and the negative dec was

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1 certified back in November which provided for the Napa
2 waste to come to Keller Canyon by truck instead of going
3 by rail up to Washington. At that point in time we saw a
4 need to change our Solid Waste Facilities Permit.

5 It went fast track, everything was in order, and
6 we obtained that at the end of March. However, that
7 contract started the first part of March and during that
8 time period we were fortunate that it was a period of
9 time in the year when generally we have lower volumes, so
10 we did not exceed our 2750 limit that was in place at
11 that time. But I could see where that would be a very
12 good example of where this Notice and Order could be
13 looked at and could have been used in that particular
14 case.

15 I think we would like to say also that we think
16 all the local approvals need to be in order, the CEQA
17 needs to be done. And if you're at that point and
18 everybody locally has approved it, Notice and Order is a
19 pretty good option while you're waiting the six months,
20 can be up to nine months, to get your JTD modified and
21 get the Solid Waste Facilities Permit through the
22 process.

23 In summary, we think it's a nice mechanism.

24 CHAIR MOULTON-PATTERSON: Okay. Thank you. Do
25 we have questions of the panel?

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1 BOARD MEMBER PAPARIAN: I have --

2 CHAIR MOULTON-PATTERSON: Mr. Paparian.

3 BOARD MEMBER PAPARIAN: I'm not sure. Some of
4 them may be more for staff than the panel members.

5 CHAIR MOULTON-PATTERSON: Sure.

6 BOARD MEMBER PAPARIAN: In the presentation, one
7 of the slides suggested that the PEP policy has been
8 applied by some LEAs to facilities with permits issued
9 after 1990. This implies that some LEAs are not using
10 that policy or am I misinterpreting that slide?

11 MR. DE BIE: I think the intent of the slide was
12 just to give the Board Members a sense of how often it is
13 used or isn't used. One of the points staff was trying
14 to make is that, as Patty had indicated, the original
15 intent of the policy was to deal with these old permits,
16 most of which have been dealt with, but now we're finding
17 that the philosophy behind the policy that basically says
18 if you're in a situation where you have a change
19 occurring and the permit process is rolling along but
20 hasn't caught up with that, it's okay to write a Notice
21 and Order to allow that to continue occurring until you
22 get the permit caught up with it. So LEAs that have
23 found themselves in that position have utilized that
24 philosophy and that's based in PEP to do that.

25 If the question is are there some LEAs out there

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1 that are holding the firm line and refusing to allow
2 those changes to occur and forcing the operator to go
3 back to their permitted limits, as Patty indicated it
4 varies on the situation and it varies in terms of what
5 the LEA is looking at and what criteria they're utilizing
6 to make that decision.

7 So I'm not in a position where I can say there's
8 an LEA jurisdiction or more than one out there that
9 refuses in every situation to allow changes to occur
10 beyond the permit. I think the norm is more to allow
11 those changes to occur under a Notice and Order.

12 Staff's concern that we tried to present here in
13 our options is that there is a lack of clarity on what
14 should be looked at when assessing the situation. So one
15 way that we got to that was to look at the five criteria
16 that were in the original policy and see if there's a way
17 that we could work on trying to define those better or
18 maybe even trying to see if the LEAs should be required
19 to make certain findings because sometimes we see Notice
20 and Orders without comprehensive findings being made
21 other than that there's a violation and here's a Notice
22 and Order to allow you to continue it.

23 We're also seeing some LEAs using this
24 philosophy embedded in PEP to allow changes to occur at a
25 facility prior to them actually occurring. So they're

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1 not over tonnage but they plan to be over tonnage. So a
2 Notice and Order is written to allow them to take a
3 higher level of tonnage before they're actually in need
4 of it, they're planning on it, and in most cases that's
5 because again the permit process that has been rolling
6 along and has been slowed down for one reason or another
7 and hasn't been completed. So it's an interim approach.

8 BOARD MEMBER PAPARIAN: Let's take something
9 like tonnage. It seems to me that people ought to be
10 able to anticipate pretty well in advance if there's
11 going to be -- if they're going to be bumping up against
12 and possibly exceeding their tonnage limits, and it seems
13 like this PEP thing ought to be -- it should be like a
14 last resort instead of what appears to be happening which
15 it's been more like the norm for changes in tonnage and
16 some of the other things.

17 MR. DE BIE: I agree in some situations an
18 operator should be pretty well aware of where they are in
19 terms of their permit limits and their actual tonnages
20 coming in and what's predicted for the future. Some are
21 not or seem to be not fully aware and sort of seem to be
22 caught by surprise that during an inspection an LEA notes
23 that they are 200 or 300 tons over their daily limit and
24 reports that to them and makes a finding of violation.

25 Maybe Patty and Norm could sort of speak to some

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1 examples they're familiar with and how an operator might
2 find themselves in a position of being over tonnage.

3 MS. HENSHAW: Well, you've got like 56 LEAs. So
4 there could be all sorts of different scenarios that
5 could lead to this situation. Yes, lots of times the
6 operator should be prepared to anticipate future growth
7 or whatever, but what happens sometimes is there may be
8 MOU agreements with the cities that are involved around
9 that landfill, there may be CEQA limitations, there may
10 be politics in going back and trying to get tonnage
11 limits. There may be new -- it could be that we're in a
12 good economic development right now and there's a lot of
13 construction debris and there's a lot of other stuff
14 going to landfill.

15 Actually right now in Orange County, a year ago
16 they were easily within their permitted tonnage limits.
17 Right now they're at a crisis because of -- just because
18 of development and increased activity and more people
19 moving to Orange County so there's more trash. Now
20 they're at their permitted limits and they're in a crisis
21 situation. But to go back to get CEQA, to go back to
22 change the MOUs with the cities, that's all politics.

23 So I mean it's -- there's a lot of reasons why
24 things can happen that aren't predicted that all of a
25 sudden is an issue, and so sometimes the permit

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1 process -- there isn't a permit process undertaken. It's
2 just an acute crisis going on and there has to be
3 something taken.

4 Now, I agree with Mark that a stipulated order
5 should have findings. There should be a whole series of
6 findings that are made to justify why this is a good
7 thing. I don't think someone should just issue a Notice
8 and Order just because someone asks or they're over their
9 permitted tonnage and they say okay, no problem, and just
10 issue a Notice and Order. There should be compelling
11 reasons why this is necessary. Like I said, I've had
12 operators ask ahead of time can I violate my permit
13 because I need this tonnage increase, and we've said no,
14 that's not an option because you have other options
15 available to you, you created the situation for yourself.
16 Other times it's the community creates the crisis and
17 it's happening at that point and we need to work with the
18 operator to figure out a solution.

19 The main reason is because you've got to think
20 about what the goal is of these tonnage limits. First of
21 all, the goal of the landfill is to dispose of trash. I
22 don't want it on the streets of Orange County, I want it
23 in the landfill. But tonnage limits also are based on
24 all sorts of things. They can be based on CEQA, they can
25 be based on the amount of equipment in the landfill,

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1 whether they can handle the tonnage limit. There's all
2 sorts of reasons why tonnage limits are established.

3 So just because an operator is going over a
4 tonnage limit, it doesn't mean they can't handle the
5 tonnage limit. It may be the tonnage limit was
6 established by the Air District or established by
7 politics, just an MOU with the city. So there's all
8 sorts of reasons that could force the issue.

9 BOARD MEMBER PAPARIAN: It seems like when the
10 tonnage limit is established for whatever reason, CEQA or
11 local politics or whatever it might be, there was a
12 reason somewhere that that tonnage limit was established.

13 MS. HENSHAW: Right.

14 BOARD MEMBER PAPARIAN: Suddenly it's being
15 violated or exceeded.

16 MS. HENSHAW: There needs to be findings. If
17 there's a reason to go over a tonnage limit or allow it
18 ahead of time because they're already going over, you
19 have to have findings. There's a CEQA already processed
20 or there's an immediate crisis that there's a need to --
21 there's no other landfill in the immediate area to take
22 this tonnage.

23 That's why I agree with Mark. There should be
24 some findings of justification to make that decision and
25 it should be to the benefit of the community, not just

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1 because an operator wants to increase their business
2 basically.

3 CHAIR MOULTON-PATTERSON: You know, I have a
4 question and I really don't know if it fits here but it
5 seems to. It's been kind of bothering me.

6 When I visited Bauerman Landfill in Orange
7 County, they were telling me about like 3:00, 4:00 they
8 get real nervous about the tonnage and everything and
9 they have to turn around these trucks and it creates a
10 lot of air quality problems. And then sometimes it's so
11 late that it actually has to go back to the transfer
12 station and it's sitting overnight in a transfer station.

13 I don't know, since I've been on the Board just
14 11 months, all the history of this but maybe my
15 colleagues, staff or somebody can -- it seems like a big
16 problem. Is this something we face all over? Is this
17 unique to Orange County or is this just an unanswered
18 question?

19 MS. HENSHAW: Well, right now that situation is
20 unique, I think, to Orange County just because like I
21 said, they were a year ago easily meeting their tonnage
22 limits and under their tonnage limits. It's just a
23 recent situation with different --

24 CHAIR MOULTON-PATTERSON: Because of all the
25 development?

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1 MS. HENSHAW: Basically. And now they're
2 turning away trucks and that makes the transfer stations
3 get close to their tonnage limits. And then we have
4 transfer trailers sitting in hauling yards, full of trash
5 overnight because they can't get to the landfill or not
6 allowed to dispose at the landfill. So we've got this
7 garbage kind of moving around the county waiting for a
8 place to go and that's where we get the situations.

9 MR. DE BIE: I think it's staff's desire in
10 looking to the Board for some direction is it's not
11 really laid down in any level of detail what it is that
12 the LEA should be looking at. This Orange County
13 situation, certainly the alternatives, having trash sit
14 in transfer rigs, is not ideal. The better solution
15 would be to get it disposed of and covered.

16 CHAIR MOULTON-PATTERSON: That's what they try
17 they said, but they say that does happen and it's a real
18 problem.

19 MR. DE BIE: Certainly. The other side of the
20 coin is for one reason or another an operator may be
21 going out and getting a contract without doing all of the
22 beforehand work in terms of getting their permits updated
23 and, you know, ready to be consistent with their
24 anticipated increase and then sort of just suddenly
25 saying I'm over tonnage, write me a Notice and Order, and

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1 maybe not having a situation where waste has to be
2 diverted or maybe there's another landfill, a competitor
3 that could take the waste and that sort of thing.

4 The LEAs are not currently being directed
5 through any direction from the Board on how to assess the
6 situation. PEP does have some of those general sort of
7 things, but again those were sort of directed at those
8 old permits, so you still have the same kind of thing
9 happening without really any clear direction on what to
10 look at and how to look at it.

11 Board staff is given copies usually of the draft
12 Notice and Orders for comment, and at that time we try to
13 sort of direct the LEA on gosh, doesn't look like you
14 have much standing here in terms of findings or reasons
15 and we'll comment on that, but it's still left to the
16 discretion of the LEA to go forward with that Notice and
17 Order or not.

18 CHAIR MOULTON-PATTERSON: Thank you.

19 Mr. Jones.

20 BOARD MEMBER JONES: Madam Chair, I think -- I
21 agree with the idea that if an operator goes out and
22 wants to solicit everybody's business and doesn't have a
23 facility that can deal with that then clearly that is not
24 what should just drive a Notice and Order. But I think
25 there's a lot of situations where because of growth,

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1 because of other things, an operator is forced to expand
2 his operations to take care of existing franchise or
3 existing commitments.

4 A flood, we took out five years of capacity in
5 Marysville in three months, five years of capacity to
6 take care of the flood, that was under water, that
7 couldn't be recycled because the sewer treatment plants
8 and the septic systems that contaminated everything. So
9 everything had to be dumped.

10 In San Francisco, the same thing. That happens.
11 That's a real issue. We didn't solicit that business but
12 we got a Notice and Order that allowed us to be able to
13 deal with those things.

14 But I think that 180 days to change a permit --
15 we had an LEA at the last one of these little workshops
16 that said that her last permit that she put through on a
17 revision took two years. That is clearly longer than 180
18 days. 180 days is when the documents have been delivered
19 to the LEA and been accepted. There's an awful lot of
20 work that goes in between and if conditions change quick
21 enough in a jurisdiction that they can't respond that
22 fast because they do have to write -- depending upon the
23 facility, they've got different requirements of what they
24 need to write. A Joint Technical Document is not
25 something that gets thrown together in a matter of days.

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1 It needs a lot of work and CEQA needs work.

2 The 180 days assumes that the facility is --
3 that it's been delivered to the LEA and that CEQA has
4 been dealt with, that you had the public hearings. So I
5 think we need to be able to give -- first off, I don't
6 see the Advisory Number 38 in the packet, so I don't know
7 what advice has been given to LEAs, as a Board Member,
8 which I think would be valuable information to see if in
9 fact what that can be tweaked with.

10 What we're asked for here is four or five
11 bullets on each one of these little screens as to what
12 our options are, but I would like to be able to see what
13 that advisory sort of directs people to do so we can
14 either mold this thing because clearly I don't think that
15 we want to be able to allow a Notice and Order for
16 somebody that's got a great marketing team that can go
17 out and get material from all over the world. That's
18 not -- there's a process involved and people that
19 understand the marketplace know that's part of the cost
20 of doing business, but if we don't allow people to be
21 able to respond to local issues, Puente Hills during the
22 summer a couple of years ago was closing at -- 10:30,
23 Grace? 10:00, 10:30. So all that waste that was heading
24 there ended up going other places.

25 They never asked for a Notice and Order because

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1 they had real requirements and couldn't exceed that, but
2 the flag went up and the drivers had to go find another
3 place to take that material. A lot of that material had
4 already gone through the recovery process. All the
5 recyclables had already been recovered from it, so then
6 they start driving to Lancaster or Palmdale or Spadra or
7 wherever they can get -- Brea, wherever they can get the
8 quickest depending upon traffic. And in southern
9 California, that's an issue. When the freeways are
10 loaded, that's an issue.

11 I think we need to look at and set clear
12 direction as it's not appropriate in these cases, it is
13 appropriate in these cases. Landfills are shutting down.
14 Transfer stations are shutting down. It puts burdens on
15 other parts of the wastestream and you've got to let a
16 local LEA understand the local politics. To just say
17 send it 60 miles away as a direction from this Board,
18 then you're going to have every local politician that has
19 to set the rate going just a little bit upside down.

20 I think we need to look at that 38 and see what
21 kind of direction has actually been given to LEAs,
22 personally.

23 CHAIR MOULTON-PATTERSON: Mr. Eaton.

24 BOARD MEMBER EATON: I have just one. I would
25 like to frame the question, and second I have a

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1 hypothetical. And I know that Ms. Henshaw didn't mean to
2 imply that the fact that the Air Board had restricted a
3 particular permit allowed a Notice and Order to go
4 forward. What happens when you issue -- in the situation
5 where Norm's facility has an air permit for 2750, every
6 other permit says 3500, can you issue a Notice and Order
7 to exceed the Air Board's 2570, and if so, what happens
8 to the Air Board? Is the Air Board notified by the LEA
9 that Norm's going to be permitted by another agency to
10 exceed that? What is the cross-media implications here.

11 We're dealing with health and safety, so if an
12 LEA issues a Notice and Order that allows Norm to exceed
13 that, the Air District obviously had health and safety
14 concerns, which is the basis of what our policy is
15 supposed to be. So I'm not saying that you do that
16 intentionally, but what is that? Is there a way for
17 mechanism for communication so everyone can get on the
18 same page to minimize the politics involved?

19 MS. HENSHAW: I'll let Norm talk about why the
20 Air District had a limit on it, but an LEA should be
21 looking at all the different restrictions. Like Orange
22 County, they have MOUs with the cities. MOUs are
23 averages over a year time where ours are daily tons. So
24 the first thing I'll tell -- it hasn't happened in Orange
25 County. We haven't issued any stipulated orders for

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1 these landfill situations at this time, but my question
2 to them would be you need to talk to the cities first,
3 get your MOUs in order because I can't just blatantly let
4 you violate an MOU with another city.

5 Same if an Air District had put a limit, same
6 thing. I would be calling the Air District and say
7 what's the situation with this, can we work together on
8 figuring how we can solve this situation, what's the
9 reasoning. So yeah, an LEA should not work in -- just
10 look at only what they're doing and ignore everything
11 else that's happening. They need to be looking at
12 everything and I don't know why the Air District had a
13 limitation.

14 MR. CHRISTENSEN: In our particular case when
15 the facility was permitted in '92 they had done the air
16 emissions, and based on the roads that were going to be
17 in place and the routes they were going to take it was
18 restricted to 2750 tons. In '96 some more paved roads
19 were put in, the calculations were redone, and the Air
20 Board issued a permit in late '96 that allowed 3500 tons
21 at that point in time. So everything was in place when
22 it came to do the Solid Waste Facilities Permit early
23 this year. That was the only change needed to get to
24 3500.

25 BOARD MEMBER EATON: It seems the issue that

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1 needs to be framed is is there a length of time right now
2 that a Notice and Order cannot exceed, is there a length
3 of time. And if not -- I don't expect to you respond,
4 but if there isn't a length of time or a normal time, six
5 months, 180 days or 90 days, what is a reasonable time
6 and question then should we as a board in conjunction
7 with the LEA and operators determine a proper time frame
8 so we don't get into these situations.

9 Emergency situations that Mr. Jones was talking
10 about are completely separate from some of the other
11 things, and the question for us I think here today as
12 stakeholders is how do we frame that issue. The question
13 is should there be a length of time a Notice and Order
14 can be in effect in these situations; and two, what would
15 be that time frame and how do we go about doing it.

16 CHAIR MOULTON-PATTERSON: Thank you, Mr. Eaton.

17 Senator Roberti, did you want to comment?

18 BOARD MEMBER ROBERTI: It hasn't been raised
19 this way yet, but to the extent it may have I would like
20 to raise it, my underlying concern in the whole business
21 of PEP options. That is that when a landfill, LEA,
22 relevant party operates because of an emergency or a
23 perceived emergency outside the existing permit and our
24 policies through -- what do we call them? The PEP
25 policies -- allow this, we have in effect allowed the

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1 landfill, LEA, relevant agency, to decide the whole issue
2 because the other issues that might be involved -- those
3 are environmental questions, neighborhood questions,
4 questions involving the affect on contingent parties by

5 continuation of the permit, the very things the original
6 permit took into consideration -- that's been decided not
7 by us but by the agency that allows and the entity that
8 engages in operating outside the permit.

9 The underlying premise of that, I fear, is a
10 feeling, whatever, is that we're on auto pilot anyway and
11 that all these permits are going to be approved anyway.
12 So all the other relevant considerations that are heard
13 in the hearing process actually go up in atomic smoke
14 because the only relevant thing that is considered when
15 they're operating outside the permit is the emergency.

16 Now maybe there's an emergency, maybe there's
17 not an emergency. But whether that emergency should take
18 precedence over all the other considerations is a policy
19 position for the Board or for the LEA de novo to take
20 into consideration and certainly not to put on auto pilot
21 because of the emergency.

22 So that's my concern and my very deep concern
23 because what underlies that even more than the specific
24 situations is the feeling from all involved, from we who
25 operate this agency and our stakeholders, is that we're

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1 on auto pilot on these things anyway and what difference
2 does it make. The emergency is the only policy thing
3 that we should take into consideration.

4 I'm really hoping for a reorientation on
5 everybody's part to look at this differently and at least
6 come up with a process where we weigh everything even
7 when the emergency takes place. Somebody has to make a
8 policy decision weighing all the various factors.
9 Otherwise we don't need a board.

10 CHAIR MOULTON-PATTERSON: Ms. Nauman.

11 BOARD MEMBER ROBERTI: Maybe if everybody can
12 address my little oration there.

13 MS. NAUMAN: Madam Chair, just in an effort to
14 respond and also to reframe the issue, I think what staff
15 is trying to drive at here is that in the current policy
16 the five criteria or factors that we've been discussing
17 this morning don't really go to the threshold question of
18 whether or not the Notice and Order should be issued to
19 allow the exceedance of tonnage or other changes. The
20 criteria now really addressed how much time should be
21 given.

22 So I think what I'm hearing the Senator refer to
23 is trying to get a handle on that threshold question of
24 under what circumstances and subject to what findings
25 should an LEA move forward with the issuance of a Notice

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1 and Order. That presumes that you're comfortable having
2 that determination made by the LEA. What I'm hearing the
3 Senator say is perhaps the Board ought to have some role
4 to play in that determination.

5 BOARD MEMBER ROBERTI: I just don't know.
6 That's a policy decision, and I guess my immediate
7 preference would be the Board to have a role to play, but
8 maybe that's one that we should decide how that's broken
9 down. But somebody in a policy making position should
10 look at this and make a determination, weighing all the
11 factors and not just the emergency, if there is an
12 emergency.

13 CHAIR MOULTON-PATTERSON: Thank you, Senator
14 Roberti.

15 Mr. Jones.

16 BOARD MEMBER JONES: I think it does need to be
17 debated and I think there are -- I agree with some of the
18 points that you're saying. I think that clearly people
19 can contrive emergencies pretty easily and prior to you
20 getting in -- I said that I don't think an operator that
21 goes out and gets new business creating an emergency for
22 himself has had a whole lot of foresight into doing what
23 he has to do within his own infrastructure to be able to
24 appropriately manage that new wastestream. But I think
25 there's a lot of issues that we need to be aware of like

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1 closing facilities, growth within the economy, recycling
2 activities that happen at landfills or transfer stations
3 that had previously been excluded or that you could not
4 do because of a permit that said you cannot do these
5 activities. All those things get handled in Notice and
6 Orders.

7 The LEA is the local agency that knows the
8 conditions locally. The one fear that I have in reading
9 and trying to surmise what some of the different points
10 of view may be promoting would be if we were -- if we
11 were so -- if we were so locked into this thing that we
12 did not allow any change and they had no option, the
13 permitted facility and they had no option, we're not
14 taking into consideration if there's other facilities
15 within the area that can even handle that wastestream.
16 So are we telling people keep it in the transfer station,
17 keep it at the curb, dump it in the street, dump it in an
18 alley?

19 Those are the options that people are going to
20 have to revert to if there are no other options. So I
21 think a Notice and Order has got to be used to be able to
22 deal with the issues.

23 I like Mr. Eaton's idea of a time frame, but it
24 needs to be a time frame that's not static, that doesn't
25 say six months to get this done because you could get

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1 into a public meeting where the public has brought up
2 five or six issues that they're concerned about and to
3 address those concerns takes you a month and a half, two
4 months, whatever, and then come back to another public
5 hearing for more debate locally.

6 The process is going to take longer than six
7 months. I don't think there's anybody in this room
8 that's ever permitted anything that thinks six months is
9 real. She's raising her hand. She does. Go ahead,
10 Patty. Is six months real?

11 MS. HENSHAW: No. Actually I agree with the
12 points being made here and looking at the options. I
13 talked about Advisory 38, which was kind of the framework
14 of all the type of enforcement options available to an
15 LEA. I would recommend this Board consider putting
16 together again a committee of Waste Board Members, maybe
17 industry, LEAs, to look at that advisory, look at the
18 PEP, look at what's happening out there, the situations
19 that are happening. Come up with parameters like these
20 guidelines in the PEP, the five that Mark talked about,
21 but talk about parameters that need to be looked at.

22 You talk about time frames, I would recommend
23 that at least Notice and Orders need to be reviewed maybe
24 every three months. Are the conditions the same, have
25 they changed. Actually, one of my facilities was under a

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1 stipulated order for two years and it was just a
2 disagreement between the county and the city. It had
3 nothing to do with anything else, it was just a political
4 issue that we stood back and let them fight it out and

5 wait until it settled before we could issue the revised
6 permit. But every few months we would go back and kind
7 of amend the Notice and Order and say yes, the condition
8 still exists, everything is doing fine.

9 A stipulated order is a great tool for an LEA
10 and actually a great tool for the Waste Board. It allows
11 kind of for an interim permit situation that puts
12 controls on the situation. You don't want someone just
13 to violate the permit and there's nothing there that says
14 well, okay, you can but you need to do X, Y and Z. We
15 don't want -- you want to have some kind of control if
16 that's a situation that has to happen. We want to be
17 able to put in conditions in the Notice and Order to take
18 care of the situation and control the situation while
19 it's undertaking.

20 My recommendation in your options is actually
21 put together a team to look at the advisory, look at the
22 PEP and then look at what's happening out there now, not
23 in 1990 but now, and what is needed and what isn't
24 needed, and give the LEAs assistance and parameters
25 because sometimes the LEA are backed into a political

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1 corner.

2 BOARD MEMBER JONES: When you issue a stipulated
3 order or a Notice and Order, you normally put in time
4 frames that they have to achieve certain goals by a
5 certain time?

6 MS. HENSHAW: Right.

7 BOARD MEMBER JONES: If they're going to have to
8 redo a permit, then they would have had to do this, this
9 and this by some time --

10 MS. HENSHAW: Milestone.

11 BOARD MEMBER JONES: I like the idea. I think
12 that Senator Roberti could -- his team could be involved
13 in a working group. But I think that makes sense because
14 I don't think we're that far off on this thing at all,
15 but I think that hearing from LEAs and hearing from the
16 people that deal with it every day and our staff and then
17 it comes back to this Board as a -- as a document or a
18 proposal to us to debate with all of that work gone into
19 it from all the stakeholders probably gets us an awful
20 lot of good input to base a policy discussion on or a
21 decision on. I would be for it.

22 CHAIR MOULTON-PATTERSON: Senator Roberti was
23 next and Mr. Paparian.

24 BOARD MEMBER ROBERTI: -- consistent with the
25 suggestion that Ms. Henshaw is making. However, I'm

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1 informed by our staff that the current policy came into
2 play in 1988 in order to review and bring up to date
3 existing permits. So I guess as part of this re-review
4 we should see if that process was completed, as I suspect
5 it was maybe ten years ago, and then ask -- and then as
6 part of that review what other reasons are there other
7 than the original reason for continuing this PEP
8 procedure that we have right now that in effect allows
9 the request to take effect before it takes effect, and on
10 the other side if there is a need for another up-to-date
11 review on permits because of population changes and
12 whatever. So --

13 BOARD MEMBER JONES: Some of the permits that
14 we're voting on are those 1980 and '75. Sure. The some
15 of the ones we've been doing lately.

16 CHAIR MOULTON-PATTERSON: Thank you.
17 Mr. Paparian.

18 BOARD MEMBER PAPARIAN: A couple of points. One
19 is a question maybe for our legal staff. That is, while
20 someone is -- let's take a hypothetical example of
21 somebody who's violated their tonnage limits, violated it
22 for say a month or two. The LEA figures it out when they
23 go and inspect the facility and then at some point a
24 little while after they issue a Notice and Order.
25 What kind of penalties are there for the time up

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1 to which the Notice and Order is issued and what kind of
2 penalties are there for the period while they're under
3 the Notice and Order?

4 MS. TOBIAS: Well, so far because -- as I
5 understand it because of the procedure, the policy that's
6 in place, there are not penalties being assessed for that
7 time that there's a violation.

8 BOARD MEMBER PAPARIAN: For the period before
9 the Notice and Order?

10 MS. TOBIAS: Right.

11 BOARD MEMBER PAPARIAN: Okay.

12 MS. TOBIAS: As I understand it -- P&E staff
13 might want to add to this, but as I understand it the LEA
14 finds a violation, the violation is noted, the Notice and
15 Order is issued. But to this point because the Notice
16 and Order is issued and given a compliance time, there
17 have not been penalties assessed going back to that time
18 in between.

19 I might point out that the section of the
20 statute that I think is most relevant is 44004 and it
21 does say that no operator of a solid waste facility shall
22 make any significant change in the design or operation of
23 the solid waste facility not authorized by the existing
24 permit unless the change is approved by the enforcement
25 agency and conforms with this division and all

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1 regulations adopted pursuant to this division and the
2 terms and conditions of the Solid Waste Facilities Permit
3 are revised to reflect the change.

4 So that may be something that the Board wants to
5 look into, that there may be a reason to issue a Notice
6 and Order to allow a period of time to come into
7 compliance, but they may also wish to look at whether --
8 what to do about that time frame in between where there
9 was a violation and the facility was not in compliance.

10 BOARD MEMBER PAPARIAN: Yeah, I think that's a
11 good -- we ought to look into that area a little bit as
12 this goes forward. I wanted to respond to something that
13 Board Member Jones mentioned about the -- not looking at
14 the capacity in the region potentially as some of these
15 decisions are being made. There's kind of a flip side to
16 that, and that is that I'm not sure we're in a position
17 where the capacity in the region can be looked at in
18 making the decision on the Notice and Order. That is, if
19 there's adjacent capacity and if an adjacent jurisdiction
20 has capacity that the waste could go to instead of the
21 facility that's exceeding its daily limits, I'm not sure
22 the LEA can really take that into consideration,
23 especially if the facility is not in that LEA's
24 jurisdiction.

25 BOARD MEMBER JONES: But I think a lot of them

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1 will. They'll look and see rather than you exceed, these
2 options are close or whatever, but sometimes they could
3 be 60 miles away to the nearest facility.

4 BOARD MEMBER PAPARIAN: And there may be --

5 BOARD MEMBER JONES: -- and that's part of the
6 process; right?

7 BOARD MEMBER PAPARIAN: There may be a situation
8 where it's desirable to go 60 miles away and it may be a
9 situation where it's not desirable. And I'm not sure
10 that the LEA in some situations is the person to really
11 make that decision, especially if it's in another LEA's
12 jurisdiction.

13 BOARD MEMBER JONES: Right.

14 BOARD MEMBER PAPARIAN: So maybe we, in this
15 process, may need to look at some of the regional
16 capacity issues and somehow overlay that into some of the
17 decision making about Notices and Orders.

18 CHAIR MOULTON-PATTERSON: Well, just as a
19 pragmatic thing, who does make the decision then? I'm
20 just thinking -- say Orange County, L.A. County, 60 miles
21 away in traffic is a huge decision.

22 BOARD MEMBER PAPARIAN: Right.

23 CHAIR MOULTON-PATTERSON: What do you do?

24 MS. HENSHAW: Well --

25 CHAIR MOULTON-PATTERSON: Does it go back to the

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1 transfer station?

2 MS. HENSHAW: You would consider if there's
3 other landfills in the area, even if it's in another
4 LEA's jurisdiction. You may consider well, is that
5 landfill going to close at 4:00 and they can't get to it.
6 Yes -- like I said, Orange County is in a crisis and so
7 is L.A. County sometimes but there's other landfills. So
8 you would take that into consideration because you don't
9 just -- there may be other considerations, can they get
10 there and dispose of it in a timely manner.

11 The hauler may not like the idea that they're
12 going to be going 60 more miles and all that other kind
13 of stuff, but if there's other options available, like in
14 Orange County right now they're going -- they're driving
15 50 miles to one of the other county landfills in south
16 county. That's their option right now.

17 BOARD MEMBER PAPARIAN: I'm not sure we've
18 provided real criteria for the LEAs to make this sort of
19 determination whether something could be diverted and
20 under what circumstances to a different landfill or
21 jurisdiction.

22 MS. HENSHAW: We work with the operator on it.
23 When we get into a discussion with the operator on the
24 situation, there's a lot of back and forth discussion.
25 Tell me what you have available, why is this situation

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1 happening, what's going on, look at your options. Don't
2 come running to me right away and say you're the only
3 option. Let's talk about what are the options. So
4 there's a lot of dialogue going back and forth. That's
5 why I was saying if there was a committee that developed
6 some parameters, some questions to ask, things to look
7 at, it would only assist an LEA and operator in looking
8 at what is needed and if a stipulated order is needed.

9 Another thing I wanted to bring out quickly, not
10 always is the operator already violating their terms and
11 conditions. We have operators coming to us that say a
12 crisis is developing. I don't want to violate my permit
13 because I'm a good operator. I need your help, I need a
14 stipulated order to give me permission to violate the
15 permit.

16 So I mean it's not always that we're just going
17 out there and the operator is already doing something
18 wrong. They're actually coming to us for assistance and
19 help to a situation that's coming to their front door,
20 and actually I would rather an operator feel more
21 comfortable coming to me first and saying hey, this is
22 developing, help me work out this situation, what can we
23 do, rather than just go and violate the permit and say
24 I'll do it until the LEA catches me. There's an amount
25 of trust you want to build with your operators so that

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1 you can work out a problem situation.

2 BOARD MEMBER PAPARIAN: In a situation like
3 that, is the Board staff brought in right at that point
4 where you know that something might be a violation down
5 the line?

6 MS. HENSHAW: Yeah. Recently I called -- in our
7 situation I called the Board staff and say this may be
8 coming your way as far as a discussion item. We need to
9 talk about what are some of the things we can do.

10 BOARD MEMBER PAPARIAN: If someone has asked you
11 for the Notice and Order without being in violation of
12 their permit, do we -- is it standard that we get
13 notified about that situation?

14 MR. DE BIE: Not -- it's not standard that we
15 would get notified early on. Certainly when the Notice
16 and Order is drafted, typically we get to see copies of
17 that and it's required that the completed Notice and
18 Order be sent to us, but I couldn't tell you how often or
19 not often we are pulled in early on in the discussion on
20 whether or not a Notice and Order should be written or
21 not.

22 BOARD MEMBER PAPARIAN: And at that point does
23 the -- I guess it's up to the operator whether they've
24 started the process to get a revised permit.

25 MR. DE BIE: To some extent the LEA too. The

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1 LEA could issue a Notice and Order that says -- saying
2 that you shall apply for a revision to your permit and
3 take that option away from the operator to apply or not
4 apply. They could require through a Notice and Order for
5 them to apply, hopefully with milestones, but we have the
6 whole spectrum out there.

7 Patty, one reason we have her on the panel is
8 because she, in our opinion, does it well and does it
9 right. We have other LEAs out there that it seems don't
10 look at anything and whatever the operator wants, they
11 get. We don't have criteria, we don't have guidance, we
12 don't have those questions that should be asked out there
13 for the LEAs to work through. It's sort of they're on
14 their own to decide what they want to do.

15 CHAIR MOULTON-PATTERSON: Before we get some
16 closure on this, Mr. Medina had some questions or
17 comments.

18 BOARD MEMBER MEDINA: I think the last speaker,
19 a key point was the need for guidance and clear direction
20 in needing to development some parameters because
21 otherwise the LEAs will be all over the map and we
22 certainly need to clarify this.

23 CHAIR MOULTON-PATTERSON: Thank you.

24 Ms. Nauman, would you suggest that we have
25 several Board Members' offices working with you on this?

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1 It seems like a real problem and I know I witnessed it
2 firsthand, and this was an operator that wanted to do the
3 right thing. I want to make that clear. They did not
4 want to violate it, but it was a huge problem. And I saw
5 that at Puente Hills when I visited also. What would you
6 suggest?

7 MS. NAUMAN: I would suggest that you give staff
8 an opportunity to go back and talk with the LEAs and the
9 operators and come back, talk with your Board Member
10 offices as well about constituting a working group on
11 this issue with the objective of coming back to you in a
12 timely manner with a specific proposal for your
13 consideration for the future use of this policy.

14 So we'll be back to your offices for further
15 discussion.

16 CHAIR MOULTON-PATTERSON: Okay. Just a moment.
17 Is that okay with all my colleagues? Does that sound
18 good? Fine.

19 Were we reserving public comments?

20 MS. TOBIAS: I don't know. You might ask
21 Ms. Nauman how she --

22 MS. NAUMAN: Our intent had been to reserve
23 public comment until the end, and we're just a little bit
24 over schedule but fairly close. So at this point if the
25 Board was ready, I would suggest we take our morning

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1 break.

2 CHAIR MOULTON-PATTERSON: Mr. Medina had a
3 question.

4 BOARD MEMBER MEDINA: Just a brief question in
5 regards to the stipulated orders and why in some cases
6 there are findings and in some cases there are no
7 findings. Are they not required in the stipulated
8 orders?

9 MR. DE BIE: I'm trying to reflect on what the
10 statute says. I think the statute is pretty well open in
11 terms of what in terms of detail need to be in a Notice
12 and Order. So again that could be an area that we
13 concentrate on is in addition to what you should analyze
14 in determining whether or not you should do a Notice and
15 Order, maybe we could even in this work group address
16 what form those findings take, should they be included in
17 the Notice and Order and at what level of detail and that
18 sort of thing.

19 MS. TOBIAS: Madam Chair.

20 CHAIR MOULTON-PATTERSON: Yes.

21 MS. TOBIAS: I would just say from a legal
22 standpoint I think that Board Member Medina has a very
23 good point that when you're listing out the reasons that
24 you're taking the action, those are basically the
25 findings. So I think what happens to a certain extent is

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1 sometimes those are very general, there's a violation,
2 we're taking an action. Sometimes they're very specific.
3 So I certainly think that's a good topic for it, but you
4 would want to have that in any kind of Notice and Order,
5 stipulated Notice and Order, the basis for which you're
6 taking the action. Otherwise, the evaluation the courts
7 would make is whether the government has taken a
8 reasonable action and you're not going to have any basis
9 for that unless that's laid out in your Notice and Order.
10 So that's where that would come in.

11 CHAIR MOULTON-PATTERSON: Thank you.

12 Mr. Jones had one final question.

13 BOARD MEMBER JONES: Just one quick one. I
14 think Mr. Paparian had asked the question about fines and
15 I never heard an answer. Are we allowed to fine for a
16 violation or is it an accumulation of violations over a
17 period of time that allows LEAs to issue \$5,000 fines?

18 MS. TOBIAS: Well, I would bow to P&E, but I
19 don't believe we have any guidelines or set policies on
20 that at this time. The way is that the statute basically
21 say what you can fine for violations of the statute.

22 BOARD MEMBER JONES: What are the limits on
23 those?

24 MS. TOBIAS: I'll have to find those. Do you
25 know offhand, Mark? I think it is \$10,000.

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1 MR. DE BIE: I think it's 10,000.

2 BOARD MEMBER JONES: Per violation of a permit
3 condition?

4 MR. DE BIE: Per violation.

5 MS. TOBIAS: Violation of the law is I think the
6 way that statute reads. I could read this right after
7 the break if you wanted.

8 MS. BORZELLERI: \$15,000 in a year.

9 BOARD MEMBER JONES: In a year. And that's
10 normally for chronic violators or people that are
11 continually --

12 MS. BORZELLERI: It's just a civil penalty.

13 BOARD MEMBER JONES: Right. Okay. That answers
14 it.

15 MS. TOBIAS: Right now it does not call out a
16 differentiation between a per point or chronic violator
17 as far as I recall.

18 BOARD MEMBER JONES: So it's \$10,000 but up to
19 \$15,000 per year -- per violation. And I see in fact,
20 that's legislation.

21 MR. DE BIE: And a little more clarification, in
22 many cases we see penalties outlined in the Notice and
23 Order and I believe it is the \$10,000 that's noted as
24 if -- and it's written in such a way that if the operator
25 fails to comply with the Notice and Order, one of the

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1 penalties could be those fines levied on them. What
2 typically happens, though, is that either the permit is
3 revised and they come into compliance or the Notice and
4 Order is extended and rolled over so they never become
5 out of compliance with the Notice and Order so you never
6 get to a point of levying fines.

7 We have some Notice and Orders that have been on
8 the books for years and they just keep rolling over and
9 over and you never get to the point of levying fines.

10 BOARD MEMBER PAPARIAN: Maybe we can talk to
11 that separately. That was a whole can of worms. I
12 didn't realize that we could have Notice and Orders going
13 indefinitely.

14 MS. NAUMAN: You'll notice when we come to you
15 on a quarterly basis with the long-term violation list
16 you'll see the facilities listed with the violation and
17 then the enforcement action that the LEA has taken. And
18 you'll see in those situations that there are several
19 Notices and Orders that have been issued sometime ago and
20 have been extended repeatedly.

21 BOARD MEMBER PAPARIAN: Back to the point of the
22 penalties though, I think as this goes forward I would
23 like some -- to develop some options on whether we should
24 give clearer guidance on penalties.

25 CHAIR MOULTON-PATTERSON: Well, hopefully this

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1 can come out of this working group. And Ms. Nauman, you
2 can see there's a lot of Board interest here. We'll look
3 forward to it.

4 Before we take our break, I would like to thank
5 Ms. Henshaw and Mr. Christensen. As you can see, you've
6 really stimulated a good discussion here and we thank you
7 very much for your participation. We'll take a 15-minute
8 break at this time and be back at five after 11:00.

9 (Recess taken)

10 CHAIR MOULTON-PATTERSON: If could I call our
11 meeting back to order, we're behind schedule. Thank you.

12 Ms. Tobias had something to read us from the
13 statute that was asked, requested.

14 MS. TOBIAS: I just want to clarify that the
15 penalties that are called for in the statute, Section
16 45011(a) establishes the fines for administrative civil
17 penalties which the Board carries out as opposed to the
18 courts, and that basically says that that's an amount not
19 to exceed \$5,000 for each day on which a violation occurs
20 and not to exceed a total amount of \$15,000 in any one
21 calendar year. Then the penalty that would be done
22 through the Superior Court is 45023 and that says that
23 any person who A, owns or operates a solid waste facility
24 and who intentionally or negligently violates or causes
25 or permits another to violate the terms and conditions of

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1 the Solid Waste Facilities Permit or operates a solid
2 waste facility without a Solid Waste Facility Permit or
3 intentionally or negligently violates any standard
4 adopted by the Board is subject to a civil penalty not to
5 exceed \$10,000 for each day the violation occurs without
6 a maximum on that.

7 CHAIR MOULTON-PATTERSON: Thank you very much
8 for looking that up.

9 MS. TOBIAS: I'm also informed -- just one more
10 thing. In our regs, Section 18304 does not require that
11 findings be made for a Notice and Order, and I don't
12 see -- in quickly trying to look at this I didn't see the
13 subsection, but I will stand by my legal opinion which is
14 that if you don't have in that Notice and Order the basis
15 upon which you are filing Notice and Order and some basis
16 for which you are requesting certain actions, I'm not
17 sure that would stand up. So I'll look at our regs and
18 see what that exactly says, but I still think you need
19 findings, some sort of findings in any kind of Notice and
20 Order.

21 CHAIR MOULTON-PATTERSON: Thank you for pointing
22 that out.

23 Mr. Eaton.

24 BOARD MEMBER EATON: So you're basically saying
25 that there is within the general context of the overall

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1 Integrated Waste Management Act penalties.

2 MS. TOBIAS: Correct. The --

3 BOARD MEMBER EATON: But what there isn't is a
4 way to bring those penalties forward because the LEA
5 doesn't bring them forward. So who would bring them
6 forward? In that case, Mr. Paparian's point because
7 that's where there's a gap. The fact of the matter is
8 the LEA ain't bringing that fine, so whose responsibility
9 and what is the procedure for the act because that goes
10 to the condition precedent for the penalty for the days
11 that are missing. And that's what's missing.

12 That's the gap I think that Mr. Paparian was
13 trying to get at is what is the gap there. It may be in
14 the statute, but obviously if they're issuing extensions
15 and continuances and what have you, they're not bringing
16 any penalties. Not that I want that, I'm just saying
17 there is no mechanism for that.

18 MS. TOBIAS: Well, I actually -- the way that I
19 would look at this without citing statute is that I do
20 think the LEAs could do their own penalties if they see
21 violations of statutes under the sections that I've read.

22 I do think the Board does have the ability if
23 the LEA is not acting to go in and act if the Board feels
24 that there's not -- if the LEA is not taking an action
25 where the Board feels they should, and of course the

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1 Board can always de-certify an LEA who they feel is not
2 taking proper actions as well.

3 So what I kind of understood Mr. Paparian to be
4 referring to is the situation where a -- where there's a
5 violation of the statute or the regulations and that
6 violation or -- I'll just call it a violation for now
7 without using the definition in our statutes -- but the
8 violation of the law is not found for a period of months,
9 let's say six months, and then in six months the LEA
10 finds that there's either an exceedance of tonnage or
11 something else and then a Notice and Order is issued.

12 So there's a question I think that he accurately
13 put forward, but he may want to clarify if he meant
14 something else, and that is do you do something about
15 that six months that the -- that there's a violation
16 which is not under a Notice and Order, or even more
17 widely, even if a Notice and Order is issued where
18 there's some kind of compliance, is there still the right
19 or responsibility to look at a penalty for violation of
20 the statute even though the entity is coming into
21 compliance because the fact is if they're under a Notice
22 and Order they are in violation of the statute. That's a
23 way of getting to it.

24 But I believe that the Board could still assess
25 a penalty and say you have a certain amount of time to

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1 come into compliance and give whatever that time frame
2 is. Does that make sense?

3 BOARD MEMBER PAPARIAN: Yeah. What I was
4 getting at I think you got at it too. There's two
5 situations, the point up until when the Notice and Order
6 is issued and the period under which you're under the
7 Notice and Order, and I think we ought to explore whether
8 there ought to be some penalties in either or both of
9 those situations.

10 BOARD MEMBER EATON: And currently we get no
11 notice on the one that happens before; correct? Because
12 as Mr. DeBie said, we don't even get advised that there
13 may have been potentially or an existing violation until
14 he gets the proposed draft Notice and Order.

15 MS. TOBIAS: That's right. And I think you
16 might have a Notice and Order that might in its -- I
17 won't call it findings -- but in its basis for taking the
18 action, it might say the operator has been out of
19 compliance since January 1st, 1999 and then you'll notice
20 the date of the order is June 1st or something. But you
21 would have to look back into it, and that's certainly
22 another place we could look at is how do we get notices,
23 is that a situation that the Board particularly wants to
24 know about and would want notice above and beyond the
25 fact that there's just a Notice and Order being issued.

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1 CHAIR MOULTON-PATTERSON: Okay. Any other
2 questions? Thank you.

3 Mr. DeBie.

4 MR. DE BIE: Thank you, Madam Chair and Board
5 Members. My role this morning is to review a little bit
6 from last workshop, and I'm going to be very quick
7 because we're a little bit behind schedule.

8 As you recall, last time we had this workshop we
9 talked about the local process as well as the
10 requirements of the operator and the LEA in the permit
11 process. So those first elements, those first two -- the
12 first levels of this pyramid we talked about already.
13 What we're now going to be entering into and talking
14 about are the Board staff review and the Board's actions
15 as outlined in 44009 and then eventually what occurs for
16 the LEA to eventually issue the permit.

17 So the next slide just quickly reviews the
18 laundry list for the operator, all of the information
19 that the operator is to provide the LEA when applying for
20 a new permit or a revised permit. We did discuss this in
21 some detail last workshop.

22 The next slide indicates what's required from
23 the LEA in submitting that application to the Board, and
24 as you can see the laundry list for the LEA is shorter
25 because that represents their review and their findings

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1 based upon what was submitted by the operator.

2 So the next level, the next stage, is to talk
3 about what is occurring when that package is sent up from
4 the LEA to the Waste Management Board staff for their
5 review. And so I'll turn that over now to Suzanne
6 Hambleton who will outline aspects of the Board's review.

7 MS. HAMBLETON: Good morning.

8 CHAIR MOULTON-PATTERSON: Good morning.

9 MS. HAMBLETON: This part of the workshop you'll
10 be hearing about three different things -- the Board
11 staff review of the full and the standardized permit, the
12 Board Members' role in the permit process, and the LEA's
13 issuance of the permit.

14 The Board staff review the full permit package
15 to make sure that all the required pieces are in the
16 package and that they're in consistency among the
17 documents. This slide and the next slide contain a list
18 of the items that the LEA is required to submit to the
19 Board -- complete and correct Report of Facility
20 Information, and you'll be hearing more about the terms
21 "complete" and "correct" later in this presentation;
22 five-year permit review report, and as you recall from
23 the last workshop every permit is reviewed and if
24 necessary revised every five years; the proposed permit
25 and the conformance finding determination, which you've

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1 also heard about in the last workshop.

2 There are three items that are required for
3 landfills -- documentation that the preliminary or final
4 closure post-closure maintenance plan is complete;
5 documentation of financial assurances for closure; and
6 documentation of financial ability to provide for
7 operating liability. Additionally, the land use or
8 Conditional Use Permit is included if it is applicable to
9 the project and the LEA finding that the California
10 Environmental Quality Act supports the application
11 package.

12 In summary, these are the items that must
13 accompany the permit package for a full Solid Waste
14 Facility Permit, and at this point in the presentation we
15 would like to describe the Board's role in reviewing
16 closure plans, financial assurances and CEQA in more
17 detail. Michael Wochnick of the Board's Closure Branch
18 will begin this part of the presentation.

19 CHAIR MOULTON-PATTERSON: Thank you,
20 Ms. Hambleton.

21 MR. WOCHNICK: Thank you, Suzanne. Madam Chair,
22 Members of the Board, I'm Michael Wochnick with the
23 Remediation, Closure and Technical Services Branch. My
24 task this morning is to give you a brief primer on
25 closure plan process and how it interacts with the permit

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1 process.

2 There's basically two types of closure plans,
3 preliminary and final. The preliminary plans provided a
4 basis for the cost estimate for closure and post-closure
5 maintenance so the facility can start funding so there
6 will be enough the time closure comes around so it will
7 be available. The final plans, besides providing a cost
8 estimate, also has the detailed plan as scheduled for
9 closure and post-closure maintenance.

10 To let you know, these are fairly detailed
11 engineering plans and very thick documents. The main
12 difference between, a preliminary plan will generally
13 have conceptual designs within it. For example, for
14 landfill gas monitoring you have maybe the number of
15 wells and a typical design, enough detail where a cost
16 could be judged how much those would cost and good cost
17 estimates can be made, while final plans will have much
18 more detailed designs such as exact placement of the
19 wells, specific design and depth of screening as an
20 example.

21 There's two different due dates for closure
22 plans, whether it's a preliminary or final plan. The
23 preliminary plans are the ones that have a direct
24 relationship with permit actions. Either a new or
25 revised or updated preliminary plan is due with any

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1 permit action. That's a permit review, revision or new
2 Solid Waste Facility Permit.

3 Final plans are due two years prior to the
4 anticipated date of closure, so they're not tied directly
5 with the permit action. Although the preliminary plans
6 are tied with permit actions, the facility operator can
7 submit a revised plan at any time if they want to change
8 their closure design or for whatever reason want to do
9 that. And for as far as updated preliminary plans like
10 for permit review, et cetera, the minimum items that have
11 to be revised pending -- assuming a previous preliminary
12 plan had been approved at one point, and since these have
13 to be revised a minimum of every five years since there's
14 a permit review required at least every five years, the
15 minimum items to this review are changes in design -- in
16 many cases there aren't going to be any change in design
17 of the closure. As long as the facilities are the same
18 geometric shape, same slopes and do the same closure
19 activities, same material, there's not going to be a
20 change in design, so that would necessitate very little
21 revisions on that part, but the other items that will
22 definitely change are possibly the closure date because
23 that was based on assumptions made five years ago,
24 whether those -- how accurate those were and are they
25 going to stay the same, the cost estimate based on

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1 dollars five years ago aren't the same as -- are today's
2 costs the same as it was five years ago, probably not.
3 And also if you compare it with the financial assurances
4 document to see that that's up to date with the new cost
5 estimates.

6 The final plans are due two years prior to the
7 anticipated date of closure. The two-year date is based
8 on allowing up to a year for approval of that final
9 closure plan, allowing for back and forth and getting a
10 final design. So an operator would have an approved plan
11 approximately a year before the facility closed to allow
12 plenty of time, especially in the public areas where you
13 have to do contracting processes and what have you. So
14 by the time this facility does close, you're ready to go
15 with the actual physical activities.

16 The review process, there's two types -- two
17 levels of -- in the review. One is completeness and one
18 is approvable. The completeness means that there's
19 enough there to review the plan, although all areas have
20 been addressed but maybe not necessarily adequately. You
21 have a form, all the blanks are filled in, but what's in
22 there may be -- I guess the appropriate term would be
23 garbage -- while the approval process is that everything
24 has been addressed appropriately.

25 Now, as far as the current review processes,

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1 that the LEAs and the Water Boards would review the plans
2 concurrently. If it's part of a permit action, then the
3 plans would be part of the JTD for the permit if it's
4 part of a permit application. Often times these are
5 submitted as a separate document with the JTD as a
6 separate appendix but not always.

7 Once the LEA and the Water Board have deemed the
8 plans approvable, then the Waste Board staff has a 30-day
9 limit to then review the plans for final approval.
10 Because of that short time line, the Waste staff
11 generally would look at things that could be considered
12 red flags or show stoppers, things like is there an
13 inadequate design, does it meet requirements, is there
14 inadequate cost estimates, or in case of final plans
15 where CEQA hasn't been complied with.

16 The exception to that is it is allowed under the
17 regulations that either the LEA, the Water Board or the
18 operator themselves can ask the Waste Board staff to
19 review these closure plans earlier in the process. It's
20 required at the Waste Board staff to do the final
21 approval at the very end, but it's an option earlier in
22 the process.

23 Just as an aside, prior to the revision of the
24 1220 regulations, the process was somewhat different
25 where the Waste Board was the coordinating agency for the

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1 review of the plans and was required -- so we could
2 review it all the way through completeness and the
3 approval process and was required to make -- it was our
4 job to make sure that the LEAs and the Water Boards were
5 getting their plans when they were supposed to and then
6 review them in a timely manner, and then if there were
7 any conflicts among the agencies to try to sit down with
8 the agencies and try to resolve those conflicts.

9 As far as in the review and approval process,
10 there are certain defaults in the regulations. If an LEA
11 or Water Board does not within a 30-day time period tell
12 the operator what -- whether their plan is complete or
13 incomplete and what is incomplete in the plan, the plan
14 is deemed complete by default. And that's an important
15 aspect I'll get to a little bit later.

16 As far as approvable, if an LEA or Water Board
17 does not comment on the plan within a 120-day time
18 period, the plan is deemed approved by default. There
19 are no broad defaults for the Waste Board process even
20 though we have -- there's a 30-day time limit in the
21 regulations for us to review and approve or disapprove
22 the plan, at the very end if for some reason we don't,
23 30-day limit, there is no default in the regulations
24 themselves.

25 As I mentioned, completeness is a very important

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1 point because for permit action the closure plan only
2 needs to be deemed complete, not approved, for permit
3 action to take place. That's -- sometimes that does
4 create some problems but usually not.

5 A couple scenarios that can apply on this case,
6 as I said you can have an old preliminary plan that may
7 have been submitted years back, five, six, seven years
8 ago that may have been deemed complete, may have been
9 approved, may not have been approved, may not have gone
10 to that full process, but as long as the next permit
11 action is not enabling an expansion of the site or some
12 change in the actual physical layout of the facility and
13 there's no change in design, that preliminary plan could
14 be considered, quote, complete for any new permit action,
15 essentially permit action such as a tonnage or a time,
16 hours of operation change. The design has not changed
17 significantly enough that the old plan wouldn't be
18 considered complete and, therefore, you would have an old
19 plan that's complete, maybe the cost estimates are not
20 quite up to date where they should be but it's still far
21 enough along for a permit action to take place.

22 For expansions, those almost always have
23 submitted the revised closure plans as part of the permit
24 action because that's -- expansions are considered new
25 permits in that respect. Then other cases during permit

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1 actions that the LEA has asked the Waste Board to review
2 these plans on an earlier -- earlier in the process and
3 those are usually worked through the system.

4 I would like to mention though that although
5 permit actions can take place without the plans being
6 approved, that doesn't stop action on the plans because
7 they -- both Board staff and the LEA and the Water Board
8 would continue working to getting these plans approved
9 outside the permit process.

10 That brings up the last slide here which is a
11 couple of issues that arise because of the regulations
12 and the process. As alluded to a little bit earlier that
13 revised and updated closure plans are not always
14 submitted with permit review and revisions to new
15 permits, as I said, if there's been no major changes to
16 the facility, then the old plans could be deemed complete
17 and, therefore, permit action could take place. So
18 there's no really incentive on the operator's part to
19 resubmit an updated plan because they can get their
20 permit action without it.

21 The other thing is that Waste Board staff do not
22 always review closure plans prior to the permit actions.
23 As I mentioned, since under regulations we're not
24 required to review the plans until at the final stage for
25 approval, in many cases we do not have them up front and

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1 often there's revisions in closure cost estimates as part
2 of the permit application and Board staff haven't had a
3 chance to either review the plan to see if these revised
4 cost estimates are appropriate or not and, therefore,
5 runs into a little conflict there with the proposals.

6 So therefore -- in most cases you have to rely
7 on the LEA and the Regional Water Board as far as the
8 completeness and the closure plans prior to the final
9 approval.

10 That concludes my presentation. I'll be happy
11 to answer any questions you may have.

12 CHAIR MOULTON-PATTERSON: I don't see any.
13 Thank you very much.

14 BOARD MEMBER EATON: I have one question.

15 CHAIR MOULTON-PATTERSON: Excuse me.

16 Mr. Eaton.

17 BOARD MEMBER EATON: Was the fact staff does not
18 review the closure plan, was that all the result of 1220
19 as well where prior to 1220 -- I know there was another
20 incident but is all of the way we review now post-1220?

21 MR. WOCHNICK: Post-1220, yes.

22 BOARD MEMBER EATON: So at one time we did have
23 that ability.

24 MR. WOCHNICK: Prior to 1220, the Waste Board
25 was the actual coordinating agency.

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1 BOARD MEMBER EATON: Correct.

2 MR. WOCHNICK: So we have it from completeness
3 all the way through. So we would have it at that point,
4 yes.

5 BOARD MEMBER EATON: Thank you.

6 MR. WOCHNICK: I would like to introduce
7 Ms. Diana Thomas with our Financial Assurances section.
8 She'll be making the next presentation.

9 CHAIR MOULTON-PATTERSON: Thank you very much.

10 MS. THOMAS: Thank you, Mike. Madam Chair and
11 Board Members, I'm Diana Thomas with the Financial
12 Assurances Section and I'm going to briefly discuss today
13 the financial assurance requirements as it relates to the
14 permit action. I'll be discussing the coverage
15 requirements, acceptable mechanisms, and at the end of
16 the presentations I have flow charts that illustrate the
17 process.

18 Disposal sites in California are required to
19 provide coverage for the total cost of closure and
20 post-closure maintenance, as well as the total costs for
21 corrective action for known or reasonably foreseeable
22 releases and operating liability coverage for third party
23 bodily injury or property damage. I'll briefly discuss
24 the acceptable mechanisms available to operators and give
25 you a little bit of background on how they work.

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1 First of all, the trust fund and enterprise fund
2 are funding mechanisms which allow an operator to build
3 up the fund over the life of the facility. Surety bond
4 is an instrument whereby a surety will promise to pay for
5 closure or post-closure maintenance or corrective action,
6 or promises to perform those activities on behalf of the
7 operator.

8 Letter of credit is an instrument whereby the
9 operator goes out to a financial institution and secures
10 a line of credit. The operator is then required to repay
11 those funds to the financial institution.

12 MS. NAUMAN: Madam Chairman, Board Members, if I
13 might interrupt the presentation quickly. To assist you
14 in this review, behind tab four is a document of
15 financial assurance mechanisms for closure and
16 post-closure maintenance cost, and there is a description
17 of each of the mechanisms that Diana is reviewing now.
18 This may help you.

19 CHAIR MOULTON-PATTERSON: Thank you for pointing
20 that out.

21 MS. THOMAS: The insurance mechanism is a
22 contract whereby the insurer agrees to pay for closure
23 post-closure maintenance or corrective action. By
24 purchasing insurance, the operator transfers the closure
25 post-closure maintenance or corrective action liability

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1 to the insurer.

2 Self insurance and risk management is whereby a
3 risk manager is employed by a public entity. The
4 operator then certifies that they have an active safety
5 and loss prevention program which helps to minimize
6 frequency and magnitude of third party damages.

7 The federal certification certifies the federal
8 entity is committed to making a timely request for funds
9 needed to complete closure and post-closure maintenance.

10 The financial means test is a set of financial
11 criteria that uses the standard measures of financial
12 strengths such as net worth, total liabilities and cash
13 flow of a company and is designed to predict that
14 sufficient funds will be available when necessary.

15 The local government financial means test is
16 very similar to the means test that I previously
17 mentioned but it may be used by public operators only.
18 The financial criteria used measures financial strength
19 such as debt service ratio, liquidity ration and ratings
20 on general obligation bonds.

21 The pledge of revenue, which is used by public
22 operators only, is a commitment by the government agency
23 to pay future post-closure maintenance costs from a
24 future identifiable revenue source; for example, tipping
25 fees or transfer station fees.

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1 The following flow charts provide a description,
2 first of all, of the financial assurance review as it
3 relates to the closure plan reviews. The first one
4 demonstrates how the financial assurance review works in
5 conjunction with closure plan reviews. The review
6 request is a very important aspect to financial
7 assurances. Unless we have current information regarding
8 cost estimates, closure dates, it's very difficult to
9 make a complete and adequate assessment of whether or not
10 the financial assurance demonstration is acceptable.

11 As Mike Wochnick previously mentioned in his
12 presentation, the closure plans need only be deemed
13 complete in order to present the permit application to
14 the Board for consideration. So this means that the
15 estimates may not have been reviewed in detail and our
16 evaluation would be based on the estimates that have
17 either been provided by the operator or provided in the
18 preliminary plan.

19 The next flow chart shows the financial
20 assurance review as it relates to the permit review
21 process, and I'd like to note that in the last ten years
22 the Board has not concurred in the issuance of a permit
23 when financial assurances is a violation with the
24 exception of one, and that is a few months ago the Board
25 did consider a permit where the operator was under a

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1 stipulated agreement with financial assurance violations.
2 Mark DeBie will discuss this particular issue later
3 during the discussion of long-term violation policy.

4 The last flow chart shows how we go through our
5 steps of reviewing a financial assurance document when
6 it's not in conjunction with a plan or a permit action,
7 and this may be due to increases in cost estimates due to
8 inflation, increases in cost estimates due to design, and
9 annual updates that are required by operators each year.

10 The last slide here just gives the name of all
11 of my coworkers and my manager and we would be happy to
12 assist you with any questions that you might have
13 regarding financial assurances.

14 Our next speaker is Sue O'Leary who will discuss
15 the Board's responsibilities under CEQA.

16 BOARD MEMBER JONES: Madam Chair.

17 CHAIR MOULTON-PATTERSON: Thank you,
18 Ms. Thomas.

19 BOARD MEMBER JONES: Before we get on the CEQA,
20 on the closure post-closure.

21 CHAIR MOULTON-PATTERSON: Yes, Mr. Jones.

22 BOARD MEMBER JONES: Just a point of
23 clarification going back to a discussion we had some
24 months ago, the estimate is based -- if you've got a
25 facility that's got 30 years of life in a footprint and

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1 you have a fill rate of a thousand tons a day, you're
2 going to base those closure estimates on 30 incremental
3 or yearly deposits into the trust fund, for lack of a
4 better word, so that you'll be completely funded when you
5 think you are going to be closed.

6 MS. THOMAS: Right. If they're using a funding
7 mechanism.

8 BOARD MEMBER JONES: Right.

9 MS. THOMAS: It's partially based on the amount
10 of fill that's put into the landfill each year. There's
11 a formula that we use and the components of that formula
12 are the remaining capacity, the closure cost estimate,
13 and the amount of funds that are available in the funds.

14 BOARD MEMBER JONES: Right. So if you were
15 funding at a thousand and you got a permit review, the
16 operator would have to update his financial assurances to
17 show that they would actually be paying into that fund an
18 equivalent rate to what the capacity loss is basically.

19 MS. THOMAS: Right. That's based on the new
20 permit.

21 BOARD MEMBER JONES: If a facility ran into a
22 geological problem which forced closure earlier than that
23 30-year expected closure, then they would be required to
24 come up with a mechanism. If that forced that closure to
25 be accelerated to five years, losing 25 years of

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1 capacity, they would have the obligation to fund -- come
2 up with another plan because that's going to be a
3 different closure plan because of the area involved and
4 come up with the funding or the mechanism in place to be
5 able to fund closure post-closure for that shorter period
6 of time.

7 MS. THOMAS: That's correct.

8 BOARD MEMBER JONES: Okay. I just wanted to go
9 over that just so that we understand it's a fluid issue.
10 They're an estimate. When an operator is doing work at
11 the site that minimizes his closure expense as part of
12 the daily operation, that will affect the funding level
13 because they would have done that work ahead of time.
14 They wouldn't be waiting until the end.

15 MS. THOMAS: Correct. And there are some
16 operators who do work like that ahead of time and they
17 can make adjustments in their cost estimates and,
18 therefore, make adjustments in the funding.

19 BOARD MEMBER JONES: Great. Thank you. Thanks,
20 Madam Chair.

21 CHAIR MOULTON-PATTERSON: Thank you.

22 MS. O'LEARY: Good morning, Board Chair
23 Moulton-Patterson and Board Members. I am Sue O'Leary,
24 Supervisor of the Environmental Review Section. I refer
25 to you tab number five where you will find a flow chart

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1 and selected solid waste and CEQA statutes and CEQA
2 guidelines. And Board Members, I would like you to stay
3 on that tab, that flow chart. For the audience, there
4 are flow charts in the back of the room.

5 My objective this morning is to provide you with
6 a brief overview of the following four items. First of
7 all, an overview of the environmental review section,
8 staff's role on behalf of the Board in the environmental
9 document review process. For your information, I will
10 use the terms "environmental document review process" or
11 "CEQA process" interchangeably in my presentation.
12 Second, I would like to talk about the Board's role as a
13 responsible agency, statutory and regulatory authority.
14 Third, I will talk about the Board's independent findings
15 relative to CEQA for a proposed Solid Waste Facility
16 Permit. And fourth, I will describe several scenarios as
17 to how the CEQA and permit processes do or don't
18 interact.

19 So first of all, I'd like to talk about the
20 overview of the Environmental Review Section staff, and I
21 will use "Environmental Review Section staff" or "ERS"
22 interchangeably in the CEQA review process.

23 The California Environmental Quality Act or CEQA
24 established a series of detailed procedural steps to
25 ensure that the law's objectives are accomplished. This

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1 flow chart, which all of you have in front of you,
2 identifies the major process steps and interactions
3 between a lead agency, the Waste Board and the LEA for a
4 proposed solid waste project subject to CEQA.

5 First let's look at the middle column for steps
6 taken by a lead agency for a proposed project. So you
7 should all be looking right down the middle under lead
8 agency, those blue boxes. As you recall, on your July
9 11th workshop you heard from a local planner about how a
10 lead agency develops an environmental document for a
11 project. Remember that a lead agency is the California
12 government agency that has the principal responsibility
13 for carrying out or approving a project and, therefore,
14 the principal responsibility for preparing the
15 environmental or CEQA document. A typical lead agency
16 would be a county planning department.

17 The basic steps that the lead agency completes
18 in the CEQA process include early consultation,
19 preparation of environmental document, preparation of
20 response to comments, certification or adoption of the
21 environmental document, approval or disapproval of the
22 project, and they file a notice of determination. So
23 these steps are the boxes that are under the lead agency
24 on the flow chart.

25 Now let's take a look at what the Environmental

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1 Review Section staff do on behalf of the Board in the
2 CEQA process. This is the left column, CIWMB responsible
3 agency. First, early consultation and review and
4 comment. CEQA requires a lead agency to consult early in
5 the documentation preparation process with the
6 responsible agency. A responsible agency is defined as a
7 public agency other than a lead agency that has
8 responsibility for carrying out or approving a project
9 and for complying with CEQA. The Board has the authority
10 to approve or disapprove a solid waste project.
11 Therefore, the Board is considered a responsible agency
12 under CEQA.

13 Here and in your binders are a couple of slides
14 where you can find this information as well as authority
15 under the CEQA guidelines. I'm just going to have Julie
16 pan through these because I'm sure you can all read these
17 for your future bedtime reading.

18 The first slide had to do with statutory
19 authority. This is continuation of authority under solid
20 waste and CEQA statutes. This is a responsibility and
21 authority under CEQA (inaudible) guidelines, and also
22 CEQA guidelines. So as you can see, you do have quite a
23 bit of authority. Those were the main areas of where
24 your authority rests.

25 BOARD MEMBER JONES: Is that supposed to be

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1 under tab five also?

2 MS. O'LEARY: Those are supposed to be under tab
3 five. Are they under there?

4 BOARD MEMBER JONES: No.

5 CHAIR MOULTON-PATTERSON: I think they're in the
6 back of the --

7 MS. O'LEARY: I think they're in the back.

8 CHAIR MOULTON-PATTERSON: Page 15, is that it?

9 MS. O'LEARY: Now we're back in the left column.
10 ERS staff acts as staff for the Board for the CEQA
11 process. Let me say that again. ERS staff acts as staff
12 for the Board for the CEQA process.

13 Typically lead agencies do not contact the ERS
14 staff for early consultation. We are developing an
15 outreach program to reach lead agencies early in the
16 process to provide technical assistance for proposed
17 solid waste projects. Currently, ERS staff and the
18 Training Section staff are completing a series of 15
19 workshops for local government agencies on the CEQA
20 process for solid waste facilities. ERS staff is usually
21 not aware of an environmental document until the lead
22 agency has determined the type of document as well as
23 prepared and circulated the document for our review and
24 comment. Staff prepares comments and sends them back to
25 the lead agency.

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1 Next, ERS does the final review and makes
2 recommendations to the Board. Staff receives responses
3 to our comments and/or the final environmental document
4 and then compares these to the final proposed permit.
5 Using all of this information, staff makes a
6 recommendation as to the adequacy of the CEQA document
7 via the Board agenda item. I must emphasize that even if
8 the staff are involved early, as well as throughout the
9 CEQA process, that the staff cannot prepare a final
10 recommendation about a proposed solid waste project until
11 the environment document is adopted or certified by the
12 lead agency and until the Board receives the final permit
13 package. The CEQA and permit review processes are each
14 separate and both have separate requirements.

15 Next is the Board's CEQA finding and Solid Waste
16 Facility Permit concurrence. At a board meeting, the
17 Board makes two determinations. First, the Board
18 considers staff's recommendation as to whether or not the
19 environmental document is adequate for approval purposes;
20 and second, the Board decides whether or not to concur on
21 the proposed Solid Waste Facilities Permit.

22 Now I'd like to give you a couple practical
23 scenarios. As you've seen in past agenda items before
24 the Board, ERS staff will make a recommendation as to the
25 adequacy of the environmental document for a proposed

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1 solid waste project, and you may see that these
2 recommendations may vary. To give you an idea why our
3 recommendations vary, I would like to present two
4 potential scenarios.

5 In the first scenario, staff receives an

6 environmental document and a final proposed permit where
7 the project described in both documents is the same.
8 This is a good thing. In this scenario, staff review
9 both documents and prepare a statement for an agenda item
10 stating the documents are consistent, adequate, and
11 adequate for the Board's environmental evaluation of the
12 proposed project.

13 In the second scenario, staff receives an
14 environmental document and a final proposed permit where
15 the project described in one document varies
16 substantially from the other. Staff realizes that these
17 documents are not perfect and often these inconsistencies
18 are the result of the Board receiving incomplete or
19 inconsistent information. In the majority of such cases,
20 staff works with the lead agency and the LEA to provide
21 clarifying and/or additional information to assure us
22 that the project described in each document are the same.

23 If upon further review staff determines that it
24 appears that the environmental and permit documents are
25 describing different projects, staff will ask the lead

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1 agency to consider completing additional CEQA for the
2 project described in the permit. If staff can resolve
3 discrepancies, staff will prepare an agenda item for the
4 Board seeking -- prepare an agenda item seeking guidance
5 from the Board. Such guidance may include the Board
6 taking over where allowed under CEQA as lead agency for a
7 proposed project or direction from the Board for legal
8 action.

9 This concludes my presentation. Do you have any
10 questions?

11 CHAIR MOULTON-PATTERSON: Thank you,
12 Ms. O'Leary. I see none.

13 Mr. Paparian.

14 BOARD MEMBER PAPARIAN: One quick question. In
15 your flow chart you show that the Waste Board staff will
16 prepare comments on a draft EIR.

17 MS. O'LEARY: Either a neg dec or a mitigated
18 neg dec or an EIR or draft EIR.

19 BOARD MEMBER PAPARIAN: Typically what kinds of
20 things do you cover on those comments?

21 MS. O'LEARY: Oh, we cover -- basically cover
22 impacts to -- let me think here. I can get it, Mark.

23 MR. DE BIE: While you're thinking, I wanted to
24 sort of share staff's philosophy on staff's comments.
25 That is we're working with the lead agency to get the

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1 best quality document, and so we'll comment certainly on
2 the areas within our responsibility and authority in
3 terms of operating and designing aspects of that
4 facility, but if we see areas in that document that look
5 pretty sketchy, we'll bring that to the attention of the
6 lead agency with the intention that they'll contact our
7 sister agencies, the Water Board, Air Board, to discuss
8 those issues and try to fill in those gaps.

9 So the net result is you see fairly
10 comprehensive comments on those documents looking at all
11 areas of the facility and not just focusing in on those
12 areas that we have direct responsibility and authority.

13 BOARD MEMBER PAPARIAN: Part of the CEQA
14 process, if there is a full EIR, is to look at need for a
15 facility? Do we comment on need?

16 MR. DE BIE: Typically we don't talk about that,
17 but if in the alternatives analysis we see that some
18 alternatives are not discussed, for example, emphasizing
19 more recycling or diversion or waste reduction, we'll
20 bring that to the attention of the lead agency that
21 they're missing some alternative that they should
22 consider. In an EIR in terms of the alternative
23 discussion, we will sort of make comment relative to
24 that, but overarching whether this facility is needed or
25 not, we don't get into that.

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1 MS. TOBIAS: Madam Chair, I might also add in
2 response to that question that the other thing we've
3 looked at over the last several years is project
4 description.

5 A lot of times what you might see is something
6 that's a truncated project description where it's
7 describing one part of the process but perhaps not the
8 whole process that's actually involved in the -- that
9 should be involved in the environmental review such as we
10 had that situation in Humboldt County where due to the
11 way the proponent had described their project, which
12 would include some discussion of how the waste would be
13 taken away from the transfer station, that the document
14 should describe that. That wouldn't always necessarily
15 be in a project description and wouldn't be required, but
16 due to the way they had framed their project it was.

17 So I do think that CEQA staff does look at kind
18 of from beginning to end what is in the CEQA document and
19 how the whole project is structured.

20 CHAIR MOULTON-PATTERSON: Thank you.

21 BOARD MEMBER JONES: Madam Chair.

22 CHAIR MOULTON-PATTERSON: Mr. Jones.

23 BOARD MEMBER JONES: Just two questions. I
24 think the issue that Kathryn was referring to was one
25 option was a train and one was a truck over the mountains

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1 or something. That was the area she was -- we were
2 looking at or the traffic issues, but I think there's
3 another case where because of what happened in the local
4 process, other issues came up that become arbitrary as to
5 how a regulatory agency wants to deal with them.

6 What is the definition of a project?

7 MS. O'LEARY: I'll have Kathryn answer that for
8 me.

9 (Laughter)

10 MR. DE BIE: I'll take a stab at it. It's
11 fairly well defined in guidelines, but basically to have
12 a project, a CEQA project, there needs to be a couple
13 things going on -- one, that there is going to be some
14 physical change to the environment, so it's not just
15 paperwork going back and forth like a name change or
16 something but some potential physical change to the
17 environment, and that there has to be some sort of
18 approval involved from a public entity. An agency has
19 some sort of approval.

20 Another part of that is whether or not the
21 project, the activity being taken -- carried out is being
22 carried out by a public agency. So there might not be an
23 approval per se but it might be public works expanding
24 their landfill. There might not be a formal approval
25 process there but as a public entity carrying out a

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1 project, that would be part of the definition.

2 MS. TOBIAS: It has to be a discretionary
3 approval, not a ministerial. So the Board has to have
4 some ability to act or adjust the project to make it a
5 project.

6 CHAIR MOULTON-PATTERSON: Senator Roberti. I'm
7 sorry, Mr. Jones. Did you have another question?

8 BOARD MEMBER JONES: Just two more. Project
9 description, when it gets into the operational issues,
10 the operational functions that may be alluded to in a
11 CEQA document, do we critique those? Do we comment on
12 those?

13 MR. DE BIE: If the CEQA document's describing
14 certain operational aspects, certainly if they're
15 included as an indication that this aspect of the
16 operation will mitigate some impact, we'll comment on
17 that aspect. So if they say we're going to cover the
18 garbage with a tarp and we know that it's a very windy
19 area, we may comment about whether or not the tarp would
20 be the most appropriate way of covering in that facility,
21 but it would be in the area of a tarp is being used to
22 mitigate odors and vectors and that sort of thing.

23 MS. O'LEARY: We also will comment if the
24 project description specifies using one method but the
25 body of the document, the initial study, refers to a

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1 different method being used. So we'll point out
2 inconsistencies in the description.

3 BOARD MEMBER JONES: Right. But do we look at
4 what those inconsistencies -- really if there is any
5 detrimental issue or do we say let's recirculate it --

6 MS. O'LEARY: Usually if we see an inconsistency
7 we ask a question as to what is really the project and
8 ask for comment back. If it's in a neg dec, they're not
9 required to respond to our comments. Typically if that
10 occurs, we'll make a phone call if we didn't get a
11 response back and ask for clarification.

12 BOARD MEMBER JONES: And my last question. If a
13 planning department is the lead agency and they're
14 working with the LEA, who is playing an awful lot of
15 work, and the LEA deems the permit complete with the CEQA
16 documentation and the funding for closure and
17 post-closure or the insurances or whatever it needs,
18 whether it's transfer station or MRF or a landfill, and
19 the LEA has deemed it complete and it gets to this Board
20 and we deem it incomplete, what's the action that's taken
21 to determine if in fact the LEA has really done its job?
22 Do we ever go anywhere or do we just say recirculate it
23 or we're not going to accept it or we're going to take it
24 over as the lead? Is there repercussion for not doing
25 the job right the first time in our opinion?

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1 MR. DE BIE: Just to clarify, Board staff nor
2 the Board could deem it incomplete but we could indicate
3 that there are problems with the application package and
4 that information that should be there isn't there, but we
5 don't have this overall ability to deem something
6 complete and make something happen.

7 But I think your question is what do we do with
8 a situation where we're getting incomplete information
9 provided or LEAs aren't doing in our opinion the job that
10 they're required to do. We take note of it. We -- our
11 first action is try to rectify the situation, the
12 immediate situation and then follow-up with some training
13 and guidance, but then we can also make note of it and
14 when the evaluation rolls in it would be part of the
15 evaluation process.

16 CHAIR MOULTON-PATTERSON: Senator Roberti.

17 BOARD MEMBER ROBERTI: I think this may be the
18 appropriate place to raise this because Ms. O'Leary is
19 our -- in effect reviewing staff on so many items, but a
20 question that comes up is really the terminology of the
21 various siting elements, CEQA documents and permits that
22 we have as to why the terminology isn't the same. Does
23 it cause our reviewing process any difficulty because it
24 confuses me sometimes when the same statistics or the
25 same language or the same documentation isn't there for

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1 things like average daily tonnage, maximum tons -- what
2 else.

3 At any rate, you get the picture of what I'm
4 talking about. Does that cause a problem when you're
5 reviewing? What do you do to compensate for it or is it
6 insignificant?

7 MS. O'LEARY: Well, at times it can cause a
8 problem. And usually if we have problems understanding
9 what the proponent of the project is trying to do, we
10 usually we make a lot of phone calls. We have a pretty
11 hefty phone bill over in our division. So we call and
12 ask what are you really proposing. We also work with our
13 Permitting and Inspection staff person. They're our
14 counterpart to the Environmental Review Section and
15 they're most familiar with actually the facilities and
16 they generally know what's going on out on the ground and
17 what the operator may be trying to propose.

18 And thirdly, we do reiterate in our documents,
19 our comment letters, what -- if we have a question, what
20 the question is. And fourthly, I think some of it is
21 there's just a lot of difference in terminology just
22 because of some of the statute and regulations. So we
23 all have to try to get on the same page and make sure
24 that we understand what everybody is talking about.
25 Those are our basic mechanisms that we use.

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1 BOARD MEMBER ROBERTI: Have we ever given any
2 consideration to standardizing it or is this just a
3 painful thing that we live with because to try to change
4 things would be more painful?

5 MS. NAUMAN: If I might respond. Senator, we
6 have grappled with this issue over time and we continue
7 to. Mr. Jones and I have had this conversation several
8 times about whether or not permits should use one term as
9 in maximum permitted tonnage on a daily basis as opposed
10 to some of our permits that have daily maximums and
11 annual averages and this type of thing.

12 One area where we could address that is in the
13 permit and work with LEAs and operators to -- through
14 training and mutual understanding and appreciation agree
15 to utilize one term.

16 With respect to the fact that we've got permit
17 documents and then we have CEQA documents and we have
18 Conditional Use Permits, et cetera, involved in the
19 process, what we have been attempting to do more recently
20 is again, through our outreach efforts, work with public
21 agencies, that being the lead agency as well as the LEA,
22 to be involved early on in the process so as the
23 Conditional Use Permits are being developed and the
24 supporting CEQA documentations are being developed, that
25 they are developed with an eye toward what will

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1 ultimately be reflected in the permit. So that instead
2 of using other terminology in the CEQA document to
3 support the Conditional Use Permit, you would use the
4 same terminology, for instance, maximum daily tonnage.

5 BOARD MEMBER ROBERTI: I think that's very
6 important. I know from our point of view when we finally
7 get it, it can be very deceiving because something on
8 paper can look like a -- it actually happens sometimes to
9 the benefit of the people who have the landfills or
10 whatever or to their disadvantage because a request can
11 look like an increase but they've just used skewed
12 language where in effect what they're asking for is
13 really no major change and it's hard to decipher that.

14 So I would just hope that somewhere along the
15 line -- and sometimes making the change creates more
16 problems than living with the system. Somewhere along
17 the line we try to just use all the uniform terms because
18 I mean even though I've been a Board Member for over a
19 year now, I consider myself a layman in the technology of
20 this area. It would be very, very helpful I think for
21 everybody.

22 MS. NAUMAN: We have discussed this issue with
23 the Policy Committee that is comprised of Directors of
24 Environmental Health. We've tried to address this
25 through our CEQA training where we've actually required

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1 the entities where we're providing the training to bring
2 in their planning departments.

3 So there is a real need for improved integration
4 at the local level where you have planning departments
5 preparing the documents that are ultimately are then used
6 by the LEA but not necessarily consulting with the LEA
7 during the preparation. So we are looking for ways to
8 improve that integration at the local level.

9 BOARD MEMBER JONES: Madam Chair.

10 CHAIR MOULTON-PATTERSON: Mr. Jones.

11 BOARD MEMBER JONES: Just one question before we
12 break.

13 If the Waste Board comments on some clarifying
14 issues and the LEA -- or the planning department or
15 whoever thinks that in fact it's explained and their
16 local governing body has enough information, what's
17 our -- can we just say what do you mean you didn't take

18 our suggestions? We're not going to allow your CEQA
19 document to go through.

20 How do you deal with that? I've seen it. I
21 just wonder if there's a method, you know.

22 MR. DE BIE: The tactic we try to take is not to
23 appear that we're second-guessing the lead agency on
24 their findings but to indicate to them that we may not
25 have been privy to all the information that they had in

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1 front of them and if they could kindly share that with us
2 so we could get up to the same level of confidence that
3 they have about their project that they seem to be
4 demonstrating.

5 So there's a lot of back and forth negotiating,
6 clarifying that we just -- we're not second-guessing
7 them, we just want to have the information in front of us
8 so that as staff we can make a recommendation to you all,
9 the Board, that the CEQA documentation is complete and
10 does -- is consistent with the permit that you're asking
11 or being asked to concur on.

12 The form that takes is a lot of conference
13 calls, as Sue indicated. We try to keep the LEA in the
14 loop as much as possible, but sometimes we just need to
15 go directly to the lead agencies. Failing the lead
16 agency's ability to clue us in on what's missing, we have
17 the options of doing more ourselves, especially if we
18 were not consulted up front, which is our desire as
19 always to be consulted up front. And if the statute of
20 limitations hasn't run, potentially we could come to the
21 Board and request that we take some legal action to get
22 the information that we need.

23 BOARD MEMBER JONES: If the -- if that document,
24 whether it's a mitigated neg dec or EIR, has to go in
25 front of a local governing body which is going to get

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1 evidence from its planning department and everybody else,
2 do we ever contact that local governing body either at
3 the hearing or whatever and say we've got an issue here,
4 you need to deal with it before you come to this Waste
5 Board?

6 MS. O'LEARY: Let me answer that one, Mark.
7 Yes, we do. We prepare a comment letter and we have
8 testified. We've actually since probably January of this
9 year testified at three or four different Planning
10 Commission hearings and we actually have been very
11 successful. We've pointed out to the lead agency that
12 we -- under CEQA we have to -- we are required to use
13 their environmental document, and if it is not adequate
14 for the Board's purposes for the Solid Waste Facility
15 Permit, then the applicant who is hoping that once they
16 get their land use permit they'll come to our Board and
17 get their permit without a problem, may have a problem;
18 or two, that we may not have enough information to
19 determine whether the document is adequate or not to make
20 a recommendation to the Board.

21 There's an example of a solid waste -- an
22 illegal disposal pile that's just been recently
23 discovered. It's been in existence since 1951 in one of
24 our counties, and we received an environmental document
25 that was a mitigated neg dec. We commented on it. We

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1 talked to the lead agency. We went down and did a site
2 inspection. The LEA -- when we called the LEA, they had
3 not even been aware that this was a site in their area.
4 We worked with the LEA, the Water Board, and we're hoping
5 to go get Toxics pulled in, but this site has been in
6 existence since 1951 and right now it's an unpermitted
7 site.

8 BOARD MEMBER JONES: Is it still accepting
9 waste?

10 MS. O'LEARY: As of last week -- it's an
11 industrial site. They generate their own waste and they
12 dispose of it on-site. As of last week it was. The LEA
13 is taking action to issue a Notice and Order and the
14 Water Board is considering a Cleanup and Abatement Order.

15 So you would think in this day and age that you
16 wouldn't find something that's been out there 49 years,
17 but every once in a while one pops through.

18 We were very successful. We sent about a
19 12-page comment letter. We met with the planning
20 department and they postponed the item. Between our
21 letter and other letters received from -- we worked with
22 the fire department down there, the lead agency, the LEA,
23 several other aspects of the county. So in that case we
24 were very successful. We're trying to be more proactive
25 and do more outreach, but with the staffing we have we

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1 try and pick the big items and go after those.

2 BOARD MEMBER JONES: That makes me feel good.

3 (Laughter)

4 MS. O'LEARY: We're giving equal treatment.

5 CHAIR MOULTON-PATTERSON: Thank you very much,
6 Ms. O'Leary. Ms. Nauman, I know we're behind on our
7 schedule.

8 MS. NAUMAN: We are. I would suggest to the
9 Board that we have about ten minutes left on this
10 segment, or if you prefer we can break now and conclude
11 this after lunch hour.

12 CHAIR MOULTON-PATTERSON: What's the feeling of
13 my Board Members? Would you like to go ten more minutes?

14 BOARD MEMBER ROBERTI: If you're asking my vote,
15 I guess I would like to go to lunch because it's never
16 ten minutes.

17 (Laughter)

18 MS. NAUMAN: It's ten minutes without questions.

19 CHAIR MOULTON-PATTERSON: Okay.

20 BOARD MEMBER MEDINA: My counter to that was
21 five minutes.

22 CHAIR MOULTON-PATTERSON: Ms. Nauman, I think
23 we're -- there's a little restlessness.

24 (Laughter)

25 MS. NAUMAN: I've noticed.

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1 BOARD MEMBER ROBERTI: The children are
2 restless.

3 CHAIR MOULTON-PATTERSON: Right. So if you
4 wouldn't mind, a recess. Can we be back by 1:30? Is
5 that just about right? Thank you. Thank you very much.

6 (Lunch recess taken)

7 CHAIR MOULTON-PATTERSON: We can go ahead and
8 get started, Ms. Nauman. Thank you for our break.

9 MS. NAUMAN: I hope you all had a nice lunch and
10 are ready for a long afternoon.

11 Madam Chair and Board Members, we'll finish up
12 now with the segment on the Board review process and
13 Suzanne Hambleton will do that section.

14 MS. HAMBLETON: Good afternoon. We've been
15 hearing about the Board role in the permit process, and
16 before we leave that area I would like to just go over
17 one item and that is the slide before you is regarding
18 the standardized permit. Basically the differences
19 between the full permit and standardized permit are the
20 time lines, which we'll hear more about after this
21 presentation, and that is the full permit requires -- the
22 Board has 60 days to act versus the standardized permit
23 which is quite a bit shorter, which is 30 days to act,
24 and that the standardized permit has a standard set of
25 conditions in the permit which are outlined in

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1 regulation.

2 This slide lists the items that staff review
3 when they receive the proposed standardized permit.
4 Staff evaluate the standardized permit package for
5 completeness of the required items and for consistency
6 between the documents submitted. Staff also check the
7 proposed standardized permit for any terms and conditions
8 that are not authorized by the standardized tier. As you
9 know, the standardized tier conditions are set in
10 regulation and additional conditions cannot be added to
11 the permit.

12 The next area of the presentation transitions
13 from the Board staff role in the permit process to your
14 role as Board Members in the permit process. Once Board
15 staff reviews the permit package, they prepare an agenda
16 item summarizing the facility, outlining the changes
17 requested by the proposed permit, and in most cases
18 making a recommendation.

19 This table -- the table in this slide is taken
20 from a typical permit agenda item. The item listed on
21 the left side of the table are items which if not found
22 acceptable the Board may object to the concurrence of the
23 proposed permit. The exception to this is CEQA. The
24 Board has separate statutory authority as a responsible
25 agency as you have just heard earlier this morning in

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1 that presentation.

2 Statutes specifically states that the reasons
3 why the Board may object to a proposed permit. The next
4 two slides lists these reasons. If the permit is not
5 consistent with state minimum standards, staff interprets
6 this to mean that the facility is not in compliance with
7 state minimum standards. Typically staff will inspect
8 the facility before the permit item is brought to the
9 Board if financial ability to provide for operating
10 liability is inadequate, if there is inadequate financial
11 assurances to provide for closure and post-closure, if
12 the LEA has not provided the Board and the applicant with
13 a copy of the proposed permit at least 65 days in advance
14 of issuance, and if the proposed permit is inconsistent
15 with any standards adopted by the Board.

16 There are some additional special requirements
17 for transformation facilities. If the Board votes to
18 object to a permit, the objection must be transmitted to
19 the Local Enforcement Agency. Occasionally the Board
20 will not be in agreement regarding concurring in a
21 permit. If four votes are not obtained for either
22 concurrence or objection, then the Board is deemed to
23 have concurred in the issuance of the permit and the
24 permit can be issued on the 60th day. One exception for
25 this requirement is for the Board to act within 60 days,

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1 which is listed in this slide.

2 If a landfill operator is not in compliance with
3 an enforcement order from the Regional Water Quality
4 Control Board and all of the following conditions exist:
5 The waste discharge requirements are pending review and a
6 petition before the State Water Board, the petition
7 includes a request for a stay, and the Water Board has
8 not taken action on this stated request. When all of
9 these listed items occur, the Board is not required to
10 take action in 60 days.

11 This last area of this section deals with the
12 issuance of the permit. If the Board concurs in a
13 proposed permit, that Local Enforcement Agency will issue
14 the permit to the operator. The Local Enforcement Agency
15 provides the Board and applicant with a copy of the
16 proposed permit at least 65 days in advance of issuance.
17 The Local Enforcement Agency issues the permit after the
18 Board has concurred in the issuance. The permit is
19 issued 120 days before -- I'm sorry -- 120 days from the
20 date the application is deemed complete and within 15
21 days of issuing the permit the Local Enforcement Agency
22 provides a copy to the permittee.

23 This concludes this part of the workshop. On
24 the next section we will define complete and correct
25 application packages and describe permit time lines, as

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1 well as hear from panel members on these items.

2 At this point I would like to introduce Brenda
3 Saldana to continue with the workshop.

4 MS. SALDANA: Excuse me for a minute. We'll
5 switch from a left-handed person to a right.

6 Good afternoon, Board Members. My name is
7 Brenda Saldana and I'm a Supervisor in the P&I Branch.

8 Now that you've been introduced to the steps of
9 the permit process, we're going to shift gears a bit and
10 focus on some of the problems and issues with complete
11 and correct application packages for the rest of the
12 afternoon or some other issues for long-term violation as
13 well.

14 For the next hour our topic will be on the issue
15 of complete and correct application packages and how that
16 impacts our mandatory time lines. I will walk you
17 through the time lines and introduce some of the more
18 common problems associated with incomplete and incorrect
19 application packages and how they dramatically impact the
20 time lines and thus impact a smooth process for applying
21 for, concurring with and issuing a Solid Waste Facility
22 Permit. Then after my presentation we'll go to our panel
23 who will be sharing their perspective and experiences on
24 the complete and correct problem.

25 This slide shows the definition of complete and

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1 correct. Basically "complete" means that all the
2 requirements of the statutes, PRC, Title 27, Title 14,
3 have been addressed in the package, and "correct" means
4 that all the information is accurate, exact and fully
5 describes the parameters of the operation.

6 As you've learned, the operator is tasked with
7 putting all of these items into an application package
8 and submitting it to the LEA, and the LEA has only 30
9 days to determine if this application is complete and
10 correct. Therefore, the Board is dependent upon the LEA
11 to submit a complete and correct application.

12 As you can see, the relationship between the
13 Board, LEA and operator requires a common interpretation
14 of these requirements in order to process these permits
15 smoothly. Sometimes, however, it just doesn't work out
16 that way, and before we get into the problems, I just
17 want to walk you quickly through the time line so you
18 have a reference when we talk about these problems and
19 later on we'll discuss some solutions as well.

20 First I'm going to talk -- go through the time
21 lines for both Solid Waste Facility Permit and then at
22 the end just briefly talk about standardized because the
23 time lines are very different.

24 BOARD MEMBER JONES: Can you hold on just one
25 second? The Chairman has got to leave. She's got an

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1 emergency that she's got to take care of. She asked if I
2 would take over. Is everybody okay with that? She won't
3 be joining us. She'll be all right.

4 MS. SALDANA: Okay. Officially the time line
5 starts 150 days before what's listed up here. Five-year
6 permit review is due before a significant design or
7 operational change or 150 days before opening a new
8 facility. And as from our discussion this morning on
9 PEP, obviously right here is a problem that we face.
10 Many times, especially in a significant change or
11 operational change, this is going on before the permit is
12 revised.

13 Okay. This slide illustrates the next step.
14 Once the operator has submitted the package to the LEA,
15 the LEA has only 30 days to determine if the package is
16 complete and correct. If yes, then the LEA then has 55
17 days to submit it to the Board; and if no, the LEA
18 rejects the package and notifies the applicant and the
19 Board.

20 Now that you have an idea of the multitude of
21 items and findings that go into a permit package, it's
22 easy to see how quickly that 30 days clicks away for an
23 LEA. As a result, sometimes Board staff receive packages
24 that are missing pieces or are just inadequate.

25 An applicant could also request that an LEA

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1 accept their application as incomplete. If the LEA or
2 the EA agrees, then the applicant has 180 days to
3 complete the package. If no, the EA notifies the
4 applicant and the Waste Board that they did not accept
5 that. An example of why an operator might want to do
6 that is perhaps they're waiting for a CUP to be issued or
7 their CEQA process, they're waiting for that to be
8 completed.

9 After the LEA has determined an application is
10 complete and correct, then they have 55 days to submit
11 the package to the Board. And this is as we have gone
12 over before. These are the items that they submit to the
13 Board. Board staff have 60 days to concur or object to
14 the issuance of the permit.

15 I want to point out here that the 60-day clock
16 starts when the proposed permit is submitted to the
17 Board, but that doesn't mean that all the associated
18 documents, the RFI or the CEQA documents, everything
19 else, that those documents don't start the clock. It's
20 the proposed permit that starts the clock.

21 That can be a positive or negative. A positive
22 can be that some of these documents can be submitted
23 before the proposed permit is submitted so staff get a
24 jump start on reviewing these documents, or it can be a
25 negative meaning that they could submit -- the proposed

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1 permit clock starts ticking and we don't have all the
2 documents that we need to make our findings. Some Board
3 staff and LEA have worked out their own solutions such as
4 sending up draft permit packages so we can -- to allow
5 for more time for review.

6 This is kind of a review slide. As you learned
7 before lunch, Board staff review the following items for
8 a full Solid Waste Facility Permit and have 60 days to do
9 it. However, this next slide will show that we never
10 have the full 60 days to complete our review.

11 This is an example of CIWMB permit review crunch
12 time. Let's say we go back to our office and stamp in a
13 permit received today, August 9th. We look at our
14 calendar and it shows that the 60-day deadline is October
15 8th. That means that we will need to bring the item to
16 the September 19th board meeting. In order to comply
17 with noticing requirements and all of that, the item
18 needs to be as complete as possible by August 30th, and
19 that shows that staff review time is about 10 to 15 days
20 rather than the full 60.

21 The final step is if the permit is concurred by
22 the Board, the EA issues the permit to the operator
23 within 120 days of when it was accepted as complete and
24 correct. That ends the process time lines for a full
25 Solid Waste Facility Permit. I just want to show you the

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1 time lines for a standardized, which is very different as
2 you all know.

3 This is the flow. The operator submits the
4 application to the LEA or the EA. The EA has 30 days to
5 determine if complete and correct. The EA then has 15
6 days to submit to the Board rather than 55, and the -- we
7 have only 30 days to concur or deny the permit, not 60.

8 So here's an example of -- which is even worse.
9 If we went back to our offices, found a permit waiting
10 for us, the 30-day deadline would be September 8th. The
11 options are that we could work with the LEA and operator
12 to waive time lines or hold a permit or hold a special
13 board meeting on September 8th. And another option we
14 could go to the August 22nd board meeting, but in order
15 to comply with the noticing requirements it would be
16 really pushing a review.

17 That kind of just in a nutshell was our time
18 lines walking through, and what I would kind of like to
19 focus on now are some of the common problems that we see
20 with complete and correct in time lines. I'll just kind
21 of briefly go through these. Our panel is also going to
22 talk about some of the problems that they experience and
23 solutions as well.

24 So just quickly going down the list, sometimes
25 we see that the financial assurance certification is

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1 missing. As part of a completeness check, the LEA must
2 request a review and this is a step that is sometimes
3 overlooked. As you're all very familiar with, the
4 proposed permit might not match the Integrated Waste
5 Management Plan. The proposed permit is not consistent
6 with the associated CEQA documents, for example, tonnage
7 amounts might be different on a CEQA document versus the
8 proposed permit. The RFI is inadequate or incomplete.
9 An example might be a piece might be missing such as the
10 proposed permit talks about a composting activity but
11 it's not mentioned at all in the RFI. That's something
12 that we might see. Inconsistencies between the documents
13 themselves, an example we've seen in the past is acreages
14 in the RFI and the CEQA documents and proposed permit all
15 don't match.

16 Also portions of the application packet coming
17 in piecemeal, I referred to this earlier when I mentioned
18 how a proposed permit is stamped and we start the 60-day
19 clock, and if we're getting all these pieces after that
20 starting, there's a mad scramble trying to get all of the
21 stuff together in order to prepare a recommendation for
22 the agenda, the board meeting.

23 We just kind of listed out some potential
24 solutions, quickly to run through these before we get to
25 our panel. Some solutions might be redefine in regs

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1 "complete" and "correct." This might reduce the
2 ambiguity in the definition. To shoot for more common
3 understanding between all the players, perhaps more
4 training for LEAs and operators, and develop common
5 expectations. We could send a letter to LEAs and
6 operators explaining our time lines, or this letter could
7 include like an annual calendar of all of our board
8 meeting deadlines, et cetera.

9 This last one in your packet I said develop regs
10 and I need to change that. We would actually need to
11 change the statute to incorporate the Board's ability to
12 accept or reject application packages because I do
13 remember it's the LEA that has that authority.

14 Redefine a reg, when a package is received by
15 the Waste Management Board to start the 60-day clock.
16 Now the regs say that we must stamp it as received when
17 the envelope is opened. Maybe we can work with that a
18 little bit. Address this issue only by -- another option
19 is just address the issue only by evaluating LEA
20 performance. If we're consistently getting incomplete
21 and incorrect packages, we could note that for their LEA
22 certification. Encourage LEAs to only accept packages on
23 certain days that are in line with the 120-day clock.
24 This kind of goes back to the calendar idea.

25 And another one that I didn't put in here but

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1 was mentioned by staff, as you remember the LEAs have 30
2 days to determine if complete and correct, make a
3 complete and correct determination and then 55 days to
4 submit to the Board, maybe flip-flopping that so the LEAs
5 have 55 days to do complete and correct and 30 days to
6 submit to the Board.

7 So that kind of concludes my presentation on
8 time lines and some associated problems and potential
9 solutions. Right now we want to have the panel members
10 come up and have a seat. I'll introduce. We have Steve
11 Johnson from Salinas Valley Waste Management Authority,
12 Tad Gebre-Hawariat from staff, Diana Wilson from Kern
13 County LEA, and Patty Henshaw has graciously offered to
14 sit in on this panel. Our other panel member called in
15 sick today. Thank you, Patty, for stepping in.

16 We gave you earlier a list of questions that we
17 asked the panel members, if you would like to refer to
18 that. These questions, we asked them to discuss some of
19 the problems that lead to incomplete and incorrect
20 packages and should the Board be involved with complete
21 and correct determinations. Then we also asked them to
22 look at a variety of options to reduce the number of
23 incomplete and incorrect packages and just give the pros
24 and cons on one or more of those. They put all those
25 questions into a little presentation and then they'll be

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1 available to answer questions that you might have. With
2 that I'll turn it over -- does someone want to go first?

3 MR. DE BIE: Maybe we could start with the same
4 flow and have the operator start and go to the Board.

5 MR. JOHNSON: And I'm the operator.

6 MS. SALDANA: So you can either stay there or
7 come up here. It's up to you.

8 MR. JOHNSON: I prefer to state here if it's
9 okay with the Board. My name is Steve Johnson. I'm the
10 Operations Manager for Salinas Valley Solid Waste
11 Authority who has had two permits for your Board's
12 approval in the very recent past and we have two more
13 coming up shortly.

14 The Solid Waste Authority has been in existence
15 only about three years and we inherited a number of
16 permitting issues when we took over three landfills
17 operated by the County of Monterey and one operated by
18 the City of Salinas. So a good deal of my time has been
19 spent in the last year and a half devoted toward getting
20 all of these landfills into permitted compliance as well
21 as a number of other compliances.

22 The -- because of the small size of a start-up
23 organization, we used industry professionals to guide us
24 through the process rather than try to reinvent the wheel
25 all the way through. The finding that registers most

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1 clearly with me over this past year and a half experience
2 is the difficulty or the complexity of trying to
3 establish very specifically what the expectations are of
4 the LEA and what the expectations are of the Waste Board
5 and making certain you get one and the same.

6 So if I had any one single recommendation, it
7 would be create a greater level of specificity -- that's
8 a hard word -- in the detail that the Board requires in a
9 permit. As an example, on a site plan you can have lots
10 and lots of things. It may very well be that one LEA or
11 one Waste Board Member is going to accept some detail in
12 a site plan and another Member is going to want to accept
13 some other detail. If we had a real clear shopping list
14 on that process, it would save a lot of bouncing back and
15 forth to finally get the thing into compliance that we
16 need to have for acceptance by the Waste Board. With
17 that, I'll close my comments for now.

18 MS. WILSON: I'm Diane Wilson. I'm with the
19 Kern County LEA. I've been with the LEA for 16 years, so
20 I've seen quite a difference from the '80s, '90s and now
21 into the 2000s what's happening.

22 And I do appreciate the changes because in the
23 '80s we didn't have much direction. It was new. The law
24 itself was much smaller and not very detailed. It has
25 become greater in detail and that helps us do our job,

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1 and the guidance from CIWMB has become much better as
2 well.

3 The problem with complete and correct
4 applications from our LEA's perspective is that there's a
5 couple of pieces to that. One, that not -- the applicant
6 doesn't submit all the parts to the application. That's
7 fairly easily dealt with. We tell them we need to maybe
8 include this material before we accept the application.

9 Another part of that completeness is that
10 something that appears to be complete within the first
11 one or two reviews after digging deeper and looking
12 further at other documents sometimes isn't as complete as
13 we thought it was. That gives us the option to have the
14 applicant waive the time line, have the applicant reapply
15 or sometimes the incompleteness can be due to a different
16 level of expectation as you mentioned.

17 The other part I believe is being accurate and
18 exact as far as correct. That's pretty basic. That is
19 numbers, number checking, making sure they're there where
20 they should be, make sure they're matching. The options
21 there are modify the offending document and/or reduce all
22 the parameters to the lowest common denominator.

23 The third part to the correctness is fully
24 describe. It's fully describe, and that to me is a
25 subjective issue. That's where the level of expectation

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1 between the LEA and the operator or consultant and CIWMB
2 sometimes doesn't quite match. We have very, very exact
3 consultants and engineers that come in with very exact
4 information. They know exactly what to do. We have
5 engineers and applicants that come in and have no idea
6 what they're doing and we try to guide them as best we
7 can and we try to correct what they submitted and we try
8 to correct again what they submitted, but there is a
9 point where sometimes what we're getting is a minimal
10 document. It's average. It's not a Pulitzer Prize
11 winner and it's not going to get any better than that no
12 matter what we do.

13 That's an area where we seem to have some
14 conflict. Unfortunately in our past few months the
15 applicants we've had have been in that lower category.
16 So it looks like we have a sudden run-on with packages
17 that are not quite adequate and complete.

18 I also see with the time line issue that that's
19 a problem no matter what kind of permit we submit. If
20 it's a good permit or a not so good application package,
21 we still run into the time line issue based on what time
22 we submit the permit in. It's just easier for the Board
23 staff to review it. If it's a very good package, I agree
24 with that.

25 One of the things I see is that both of us are

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1 looking for maximums. The LEA wants the maximum time
2 frame, the Board wants the maximum time frame, but in
3 general you generally don't get a full 120, 150 days out
4 of it. I would appreciate the solution to give us the
5 greater time to determine the package as complete and
6 accurate as opposed to any other solutions. Maybe some
7 administrative changes with information on the drop-dead
8 dates for the Board, Board staff.

9 I would prefer not to have the Board involved
10 with the complete and correct determination, and part of
11 that is because I've seen -- that was somewhat how it was
12 in the '80s and that again gets into another level of
13 subjectivity and we ended up with discussions over minor
14 issues almost at some point as to what was fully
15 described and what is not fully described.

16 I think that's about it right now. If there's
17 other questions or ideas that come to mind, feel free to
18 ask me.

19 BOARD MEMBER JONES: Hold on just one second.

20 BOARD MEMBER EATON: What do you think is a
21 reasonable time that the Board ought to have? If you
22 want additional time, do you think the Board ought to
23 have additional time as well?

24 MS. WILSON: I think so. I think that it should
25 be worked out in such a way. It might be that

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1 application packages need to be submitted by a date
2 certain and that gives everybody the maximum 150 days.
3 And I'm not sure how to work that out other than maybe
4 changing statute that says that the Board has a minimum
5 of 60 days to review it but not more than 90 days. If
6 you think it should be in statute, but if we could work
7 out some other kind of language that gives them the
8 flexibility because the Board's input is very important
9 and if we are missing something, if there's something we
10 completely overlooked or we didn't see the broader
11 picture we want that as an LEA and we want to be able to
12 fix the problem and gain the experience from the Board
13 that they've seen this not work in another LEA or another
14 county, so yes.

15 BOARD MEMBER EATON: Thank you.

16 MS. HENSHAW: Pretty much agree with what's
17 already been said. Basically the LEAs and the Waste
18 Board staff are forced to do is really look at permits in
19 draft. Usually what we try to do is really not have the
20 operator submit an official package until we're pretty
21 much sure that everything is done because of the time
22 lines.

23 Once in a while the operator because of issues
24 are coming, marketing or whatever, they need that permit,
25 they're forced to submit it without a CEQA document or a

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1 CUP is in the works but not quite finished, but I think
2 the bottom line is there just needs to be a real tight
3 communication between the operator, the LEA, and the
4 Waste Board staff. I know most of the LEAs try to work
5 with everybody and try to coordinate that, but sometimes
6 difference of opinion of what's needed kind of causes
7 conflict.

8 As far as time lines, when we're ready for a
9 permit and pretty much sure that we're ready for it, I
10 call my Waste Board staff person and say okay, we want to
11 get a permit up there. When should I submit it so it
12 gets onto a certain Board agenda so that everybody gets
13 the maximum time? But again, sometimes -- I'm sure with
14 some LEAs they don't have that luxury. The operator may
15 be breathing down their neck, saying I want this
16 submitted, and so the LEA is trying to rush and get
17 things done, the Waste Board is rushing.

18 I think with some of the recommendations, a
19 letter to all the LEAs and operators explaining time
20 lines, actually that's already been done once. I know a
21 letter was sent to the LEAs quite a while ago. I think
22 most of the LEAs try to work with the Waste Board on the
23 time line to let them know ahead of time a permit is
24 coming.

25 Develop regulations or statute to incorporate

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1 the Board's ability to accept or reject an application
2 package, well, technically the Board already has the
3 power to reject a permit. The concern would be I think
4 for a lot of LEAs if there's a disagreement between staff
5 people of what's complete and correct, the operator or
6 LEA, or especially the operator, may want their day in
7 front of the Board Members to explain why they think this
8 application is complete and they may not like the idea
9 that staff has the option to just reject their
10 application without their day in front of the Board
11 Members to get their permit through.

12 I think when the statute was put together it was
13 initiated by operators. They wanted some kind of time
14 line to get their permits done. So obviously it's
15 motivated by them wanting to make sure that there's
16 certain constraints on what can be rejected and when.

17 Of course clarity of what's complete and correct
18 and training and trying to communicate between LEAs and
19 Waste Board staff is always a goal and should always
20 continue. Again, clarity of maybe working with the
21 operators in promoting statute that gives a longer time
22 frame would be great for everybody.

23 Then I think also within the LEA certification
24 process, if there's an LEA that's just blatantly not
25 trying to work with the operator or working with the

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1 Waste Board, I think the certification process already
2 allows there to be some discussion during the evaluation.

3 So that's kind of how -- my opinion on that. I
4 think for the most part most LEAs have been able to get
5 permits in front of the Board. It's sometimes the
6 operator has a different -- something happens and they
7 may need to make a last-minute change and everybody's
8 rushing, and it appears to the Board Members something is
9 going on and things aren't complete but really it may be
10 just a natural flow of the business and they may need to
11 make some changes at the last minute.

12 BOARD MEMBER JONES: Thank you.

13 MR. GEBRE-HAWARIAT: I think I heard some good
14 ideas, but my general statements about the problems which
15 I have observed over the years is what I would consider
16 LEA and applicant knowledge and understanding of the
17 requirements of the laws and regulations and also
18 different interpretations of the requirements and
19 different notions of what constitutes complete and
20 correct. These have been the operation side over the
21 years and the solutions have been added. And if I were
22 to add, I would just add and say assuring that the LEAs
23 and applicants have good knowledge and understanding of
24 the requirements and that's training. That's already
25 been alluded to, and what I also consider narrowing the

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1 gap of the different interpretations and requirements and
2 the different notions of what a complete and correct
3 application package is will go a long way.

4 I would sum it by one statement and that is,
5 which is my view, that there's nothing that a clear and
6 constant communication with a professional attitude
7 cannot overcome and that's what we try to practice
8 mindful of the needs of the applicant and the LEA.

9 BOARD MEMBER JONES: Are there any questions
10 from any of the Board Members?

11 Mr. Paparian.

12 BOARD MEMBER PAPARIAN: The staff presentation
13 laid out some of the potential solutions and we're
14 talking about the clock and so forth. I wonder if there
15 could be some more elaboration of what might be possible
16 in terms of -- this may be for the legal staff or Waste
17 Board staff, what might be possible in terms of
18 flexibility in the start of the 60-day clock from our end
19 of things.

20 MR. DE BIE: Certainly some of the options speak
21 to defining when that 60-day clock starts, and Brenda
22 indicated that the current regulation says that when the
23 Board opens the envelope that contains the proposed
24 permit, they stamp it on that date and that starts the
25 clock. There may be administrative ways that envelopes

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1 come in and through policy we've indicated that you write
2 "proposed permit" on the top of it and we open it on a
3 certain day. That will give us the full 60 days before
4 the next board meeting or the one after.

5 So I mean there's administrative ways that we
6 could explore and look at the legality of those, but I
7 think looking at changing the reg so that the language is
8 such so that there's greater assurance of having a full
9 60 days by defining how or when that permit is accepted
10 or stamped in is one way of doing it.

11 If we go through the regulation process, that's
12 an open process and people will be able to share their
13 points of view about what's appropriate and not, and
14 certainly an aspect of that is whether or not it's
15 inconsistent with statutes or the intent of statute.

16 Along with the solid waste -- the time frames
17 outlined in solid waste statute and regulation is this
18 overarching of the permit streamlining process and the
19 intent that permits go through a process as quickly as
20 possible without jeopardizing quality and that sort of
21 thing, so we have to be aware that there's an overarching
22 sort of intent of the statute to have things happen in a
23 timely fashion.

24 MS. TOBIAS: Mr. Chair, I might just elaborate
25 on that slightly to say that one of the things we've

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1 talked about for quite some time, I think Board Member
2 Jones will remember this, is that we talked about the
3 possibility in regulation, and as Mark said with the full
4 participation of stakeholders, the regulated community,
5 LEAs and everybody else, that what we really are
6 grappling with here is the need to have the full time to
7 review it, not necessarily more but the full time.

8 Due to the fact that our board meetings change
9 with some variation, we often could have more time if we
10 basically designated a date by which applications needed
11 to be received prior to a certain board meeting date. So
12 what we do is measure backwards from a board date, since
13 we have a yearly calendar, and measure backwards and
14 basically say that on that 60th day prior to a board
15 meeting that any applications that come in prior or on
16 that date would be heard at a certain board meeting, and
17 others, if they missed that date, would then be heard on
18 the next board meeting.

19 I think that one of the things that would happen
20 is that to a great extent a lot of permits would then
21 become -- or operators submitting permits and LEAs would
22 become accustomed to that calendar and we would encourage
23 to adopt a very similar calendar so that both the
24 regulated community and the regulators have that
25 certainty of knowing both when they might expect to have

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1 their permit heard and how long it takes to basically
2 work through a permit.

3 I think we could do that by regulation. We
4 would certainly want to look a little bit more at it, but
5 I think that's one of the ideas that's been tossed around
6 for a while in terms of trying to make sure we do that.
7 Obviously another suggestion, as staff has indicated, is
8 a statutory change. That would perhaps be a little more
9 difficult to deal with but might afford an overall more
10 comprehensive approach to the problem, but I think
11 everybody agrees on what the problem is.

12 BOARD MEMBER JONES: I think that one of the
13 speakers brought up the idea that they don't really even
14 accept the permit until all the pieces are put together.
15 My experience has always been that local -- that the LEAs
16 that you're working with are going to want to see the
17 in-progress work to make sure that it is in a form before
18 they tell you that they'll accept it.

19 Is there a way that we could put a checklist at
20 the front of this submittal that says these have been
21 taken care of as the operator sees it or the applicant
22 sees it and then the LEA can see if those pieces are in
23 fact? Not the detail of how accurate the information is
24 but that everything is there because I know there's a lot
25 of times you don't even have parts of the package, that

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123

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1 they'll send in just a notification that in fact they're
2 trying to put it together. I don't know if you accept
3 them but I've heard other LEAs worry about that.

4 Because the completeness issue is a problem for
5 us and it's a problem for LEAs and people know how to
6 count. They'll look at the calendar and see where our
7 board meeting is and get it in and know that if we don't
8 deal with it at this specific date, we can't deal with it
9 the following month because it's deemed complete.

10 That's not what the industry was trying to do.
11 I'll tell you one of the reasons the time lines were put
12 in is because permits were being held hostage in
13 different offices in different agencies. And it wasn't
14 always in this office, over here, but there were permits
15 at some time. I had a permit that took two years before
16 it ever got out of the LEA's office.

17 That clearly is not acceptable and that's why a
18 lot of those got changed, to give some kind of certainty
19 that people were going to deal with these things, but by
20 the same token I know I've been frustrated when I see
21 permits that haven't been fully developed and go into a
22 briefing and have no determination by the staff if even
23 all the pieces are there. And that is problematic
24 because that means Board Members have to scramble.

25 We have through 1220 given a lot of authority to

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1 LEAs to not duplicate our work, and I know I sat on this
2 Board when in fact most of that completeness check was
3 turned over to LEAs and my concern at the time wasn't
4 whether or not LEAs could do their job, it was whether or
5 not when we saw packages that weren't complete that we
6 would take appropriate action to make sure that LEAs were
7 doing their job, and it was more than just a discussion
8 at the evaluation time. If it was a problem all the
9 time, then that LEA didn't need to be the LEA.

10 There are remedies. I like the idea that local
11 governments have that authority, but they've got to live
12 up to the authority and not put this Board in a position
13 of not being able to do its job, which I know frustrates
14 us because it's hard to give it and not get.

15 Any questions by any of the other Board Members?

16 MS. WILSON: Before we send in an application
17 package, we usually put a cover letter with it addressing
18 all of these issues that one, the application was
19 received; two, the siting element was made, decision was
20 made; three, we've gone through and checked off
21 everything. Part of the reason, I think, complete
22 sometimes gets confused with correct. It's looked as if
23 it's not correct, it's not complete, which is what
24 statute says.

25 So we may send something up that we feel is

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1 complete and correct but there's the subjectivity or
2 difference in interpretation that was referred to on that
3 issue. So what may seem like an incomplete package is
4 because of a difference in opinion and needs to be
5 resolved. So then that's when we work with the Board to
6 try and resolve that issue. And if a permit is not
7 capable of standing in front of the Board, then we

8 usually work with the applicant to take it back, revise
9 it, work with whatever deficiency there is, and we do
10 have a checklist where we check things off.

11 BOARD MEMBER JONES: Right. I think that's a --
12 been an inherent long-standing issue about point of view,
13 subjective issues as to who's right and who's wrong, but
14 I think the LEA round tables and the project -- whatever
15 it was, Partnership 2000. I didn't mean to -- I just
16 didn't remember what the right name is. We've got a lot
17 of acronyms around here -- have done an awful lot to get
18 people to getting closer to this same kind of view, but
19 it's funny when we get reports on it when they have
20 industry view an issue, LEAs view an issue and Waste
21 Board staff view an issue. I don't remember what the
22 issue was, but I remember getting a report that the
23 industry and the LEAs kind of saw one way and Waste Board
24 staff saw it another way.

25 So I think you're going to keep working and I'm

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126

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1 sure there's others where all three disagree on how to
2 view something. So I think we just have to keep working
3 towards that through Partnership 2000.

4 MR. DE BIE: One of the options or solutions
5 that the Board staff put up were related to setting
6 common expectations and training, and one of the elements
7 of that in the past has been attempts to develop a permit
8 desk manual and --

9 BOARD MEMBER JONES: I'm for that.

10 MR. DE BIE: And we're in the process -- we're
11 oh, probably waist deep right now in developing a permit
12 desk manual and we're working on making it web compatible
13 so it's easily accessible, and we're trying to expand it
14 beyond just an informational document but include in it
15 job aids that might include the Board's calendar so
16 that -- and a calculator so you can calculate when you
17 should or could submit a permit so that it lands on a
18 certain board meeting and that sort of thing, and tools
19 like tracking your time frames for completeness review
20 and submitting the proposed permit and that sort of
21 thing.

22 So in the near future we may have better ability
23 to address those disagreements by looking at a common
24 document and basing our discussions around that.

25 BOARD MEMBER JONES: If for the -- well -- I'm

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1 sorry. Mr. Eaton. Go ahead.

2 BOARD MEMBER EATON: How many days, Ms. Wilson,
3 did you say you needed additionally you would like?

4 MS. WILSON: I agree with flipping the time
5 frame around of 55 days to determine it's complete and
6 accurate or correct and another 30 days for the permit
7 because we're all pretty much using a boiler plate for
8 the permit now, and if you have a complete and accurate
9 package you shouldn't have to do too much with the
10 permit.

11 BOARD MEMBER EATON: So one of the suggestions
12 is we have to make suggestions here and perhaps direct
13 legal counsel to develop language, at least as it relates
14 to the Board, that the Board can hear a permit in not
15 less than 60 days but not more than 90 and then the same
16 thing with you to give you the time frame which is in
17 there or something along those lines to flip it so you
18 would have not more than 55 days to determine complete
19 and correctness and not less than 30 days to -- you just
20 wanted to flip that around; right?

21 MS. WILSON: Right.

22 BOARD MEMBER EATON: So that would be fine? The
23 Board would have -- you can say not less than 60.

24 MS. WILSON: 30 days to -- 30 days to submit the
25 package.

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1 BOARD MEMBER EATON: And then you need
2 standardized permit as well.

3 MS. NAUMAN: If we're going down the path to
4 giving the Board some certain time or some floor of 60
5 days, I'd like to also suggest --

6 BOARD MEMBER EATON: No, I'm looking to extend
7 it out.

8 MS. NAUMAN: To have at least 60 days.

9 BOARD MEMBER EATON: No. To get you additional
10 30 days so that you would have to hear the permit within
11 90 days, but you could hear it not less than 60 and not
12 greater than 90. That gives you anywhere from 60 to 90
13 days to hear your permit.

14 MS. NAUMAN: One of the things that Mark
15 referred to was in the regulations the clock starts at
16 the receipt of the draft permit, not necessarily the
17 receipt of all of the elements of the application. Is
18 there some interest by Board Members to address that as
19 well?

20 BOARD MEMBER EATON: Sure. Well, that's the
21 issue, is it complete and correct. You're saying that's
22 really something that I think language-wise, let's get
23 some language floated out there and everybody can kind of
24 pick it apart, but I'm happy to put that in it as well
25 from my personal perspective, but also being sensitive to

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1 the fact that there can be subjective differences with
2 regards to what's complete and correct. But if you put
3 in there not less than 60 and not more than 90 for a
4 complete and correct package, then you solve that and you
5 also get the standardized one where you have less than 15
6 days. So if we're going to do it for a full permit, we
7 should at least explore whether you want to do it for a
8 standardized as well.

9 BOARD MEMBER JONES: Make sure it fits within
10 those time frames, that's what you're asking.

11 BOARD MEMBER EATON: Right. Just to give us
12 some --

13 BOARD MEMBER JONES: Give us some guidelines.

14 BOARD MEMBER EATON: -- guidelines and we can
15 start the process.

16 BOARD MEMBER JONES: So I think that Kathryn
17 knows what she needs to do so we can answer that
18 question. I think one of the most critical points for --

19 BOARD MEMBER EATON: Just for all of you out
20 there in the audience, obviously the legislature is
21 coming to a close in about three weeks, so this isn't
22 going to be something that's going to be put in there.
23 So you don't have to build up your accounts and get your
24 contract lobbyists going. We'd like to get the language
25 going and then perhaps look at it next year.

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1 BOARD MEMBER JONES: The -- a few years ago
2 there were permit desk manuals that operators could use
3 and it made a difference, and it is one of my biggest
4 frustrations at this Board is that we don't have a permit
5 desk manual that keeps the rules the same for everybody,
6 that it becomes interpretive by the LEAs, by Board staff,
7 by operators. There is no guideline.

8 If Board staff -- if this Board Member can give
9 any encouragement to having that permit desk manual go
10 through peer review, go through whatever and get
11 published, that if that's not one of the biggest
12 priorities that that division has, then I'm not sure what
13 priorities they should have because that would eliminate
14 90 percent of the subjective debate just if you gave
15 people a tool that they could follow, and then if they
16 don't follow the tool, they don't get a permit. That
17 gives the LEA the opportunity to say no, it doesn't pass
18 muster. But I know that this Board changed the
19 publication after I submitted a permit and they sent it
20 back to me and said it didn't reflect the latest
21 publication. So I had to redo that permit. It could be
22 used a whole lot of different ways. That day it was used
23 to cost me about another eight months, but it needs to be
24 done. It has to be done.

25 MS. NAUMAN: Mr. Jones, let me assure you that

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1 it is an extremely high priority in the P&E Division. In
2 fact, we now have one of our best permit staff people,
3 Jon Whitehill, assigned full-time to that task. And I
4 would be happy to meet with you and the other Board
5 Members to review the time line that we've developed for
6 completion of the project but again, it is a very high
7 priority.

8 BOARD MEMBER JONES: I have a level of comfort
9 just knowing that Jon Whitehill is working on it.

10 (Laughter)

11 BOARD MEMBER EATON: And so we'll get that going
12 and perhaps maybe the calendar they looked at just so
13 people can get something to chew on.

14 BOARD MEMBER JONES: Any other questions?

15 MS. NAUMAN: Thank you. That concludes this
16 section. We've gotten our direction. If the Board would
17 like to, we can take a brief break now and then go into
18 the final segment on the long-term violation policy.

19 BOARD MEMBER JONES: And I think the Board would
20 like to thank the panelists and Patty for taking double
21 duty, but I think that your comments were very, very
22 valuable for all the Board Members and we appreciate all
23 of you participating. So we'll take a recess. You want
24 to take a recess?

25 MS. NAUMAN: Yes. If the Board is ready to do

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1 that, we'll take the afternoon break.

2 BOARD MEMBER JONES: How long?

3 MS. NAUMAN: Ten to 15?

4 BOARD MEMBER JONES: Let's be back at ten

5 minutes. Is ten minutes okay? Ten minutes.

6 (Recess taken)

7 BOARD MEMBER JONES: Okay. We're back. We're

8 going to start up now.

9 The LEAs are telling war stories. Actually, the
10 LEAs brought up a good point. There aren't that many bad
11 ones. Most of the fights are done between them and the
12 operators locally before they come up here, so we really
13 don't have all that many that create problems.

14 Ms. Nauman.

15 MS. NAUMAN: In the interest of time, we will
16 just move right along to Mr. DeBie.

17 MR. DE BIE: My job is to introduce the
18 long-term violation policy.

19 One of the findings that the Board has to make
20 as presented earlier is whether or not this facility is
21 in compliance with state minimum standards when they're
22 making a decision on the permit, and at times we have
23 facilities coming forward that are dealing with a
24 compliance issue, a long-term compliance issue, but
25 there's a need to update to revise their permit. So the

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1 Board came up with a strategy in '94 to deal with that
2 and that's the long-term violation policy.

3 Since that policy was developed, it's been
4 mostly used for situations where there's an outstanding
5 gas violation, landfill gas violation, and to both
6 educate the Board Members on the nuance of landfill gas
7 and why it does take so long to deal with, we've asked
8 John Bell from the P&E Division to give you a short
9 course, a 101 on landfill gas. So John will do that and
10 then we'll come back and talk more about the policy.

11 MR. BELL: Good afternoon. I'm going to give
12 you landfill gas 101, and then we'll go to the issue of
13 getting compliance through land acquisition.

14 BOARD MEMBER JONES: Is there a test and
15 credits?

16 MR. BELL: No, no test. You don't have to
17 worry. First I'm going to show you a little reaction
18 that takes place in the landfill. This is an anaerobic
19 reaction. It takes place in the absence of air and this
20 shows cellulose breaking down in the presence of water to
21 carbon dioxide and methane, which are the two components
22 of methane gas. The bacteria does that. So this is one
23 of the most basic reactions.

24 This shows the composition, this pie chart of
25 landfill gas. The methane is shown in yellow, and I

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1 picked a percentage for it but it runs 45 to 60 percent
2 usually, and the carbon dioxide shown in gray runs
3 between 40 and 60 percent. There's a trace, a very
4 important trace that shows 1 percent, but it's usually
5 less than 1 percent of other gases that are associated
6 with landfill gas.

7 Now, methane itself is odorless and colorless.
8 It's tasteless. It's flammable and highly explosive and
9 it's relatively insoluble in water. So if you have a
10 landfill, the gas usually doesn't penetrate below the
11 groundwater table. It's lighter than air, just a little
12 bit lighter than air, it's non-toxic and it's a potent
13 greenhouse gas. The carbon dioxide part is also odorless
14 and colorless, but it's highly soluble in water and it's
15 non-combustible and heavier than the air.

16 This slide shows the phases of gas production
17 over the life of the landfill. Now, phase one shows the
18 landfill going through an anaerobic -- I'm sorry, through
19 an aerobic to an anaerobic condition, so all the oxygen
20 is being used up in phase one. Then phase one through
21 three we have all the highly putrescible material in the
22 landfill breaking down so that you're getting pretty much
23 the cellulose in the wood and plant material and paper
24 that's left so that you go to phase four, that's the long
25 stable period of a landfill.

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1 Now, phase one through three might take two,
2 three years to complete. Every landfill is unique.
3 Phase four might take 10, 20, 50 years or more to
4 complete. And then the last phase five is where all the
5 activity goes back down to zero and you have pretty much
6 an inert landfill from the aspect of producing landfill,
7 or methane gas at least.

8 Now, the trace gases that I spoke of are
9 fairly -- here's some fairly typical ones on this slide.
10 They can be volatile, like in the four that are shown up
11 there. There can be -- they can be carcinogenic. Vinyl
12 chloride and benzene are both highly carcinogenic. They

13 can produce odors. Many are soluble in water and
14 contribute to groundwater pollution at landfills.

15 Landfill gas will migrate depending on the path
16 of least resistance. It has three mechanisms that cause
17 it to move in the landfill. One is displacement like if
18 the water table moves up and down, it could move the gas
19 out of the landfill. If you compact or settle the waste
20 in different parts, you can have movement of gas also.
21 Barometric pressure changes cause kind of a pumping
22 affect. As the barometric pressure goes up and down, it
23 can move the gas in and out of the landfill. There's
24 conduction which is movement by changes in temperature
25 and density. And finally on a very small scale

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1 diffusion, molecular intermingling of molecules at the
2 molecular level.

3 Now, landfill gas takes the path of least
4 resistance, so it moves in all directions, but if the
5 surface is sealed, it will tend to migrate laterally. So
6 if you have a rain or something like that, it will move
7 predominantly in that direction, or if you pave the
8 surface of the landfill.

9 Lots of things affect landfill gas movement --
10 the depth, the types of waste, the age. The
11 characteristics of the landfill cover I've already
12 mentioned. If you have an impermeable cover, it will
13 tend to make the gas migrate laterally. Precipitation,
14 rain, seals the surface. Barometric pressure, already
15 mentioned. Control systems themselves can draw the gas
16 and then the subsurface geology in and around the
17 landfill also highly affect the gas movement.

18 Problems with landfill gas include health and
19 safety concerns. There's risk of fire and explosion at
20 certain concentrations. Workers, if they're in enclosed
21 spaces can be asphyxiated because it can displace the air
22 they're breathing. You can have chronic long-term
23 exposure to the highly carcinogenic trace gases like
24 benzene and vinyl chloride.

25 Environmental concerns can include groundwater

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1 contamination with both the trace gases and carbon
2 dioxide. It can cause crop damage by displacing the
3 oxygen in the root zone of plants, causing death and
4 degredation of the plants. You can see it some place
5 where there'll be a landfill there will be a highway. On
6 the other side of the highway an orchard will be damaged
7 by the gas migrating under the highway and displacing
8 oxygen in the root zone.

9 VOCs, volatile organic compounds, in the trace
10 gases of the landfill overall can affect -- can aid in
11 the formation of ozone in the atmosphere. It can also
12 cause odor nuisances to nearby residences. Some of the
13 gases, the trace gases, are highly odoriferous. Some of
14 them are captons and sulfur and nitrogen compounds that
15 are involved in the trace gases and some of the VOCs.

16 It also has greenhouse effects. It's one of the
17 most potent greenhouse gases. Methane is 20 to 30 times
18 more potent with blocking infrared energy than carbon
19 dioxide. Finally, it lowers land values. When you lower
20 land value, reduce the usefulness and also aid in the tax
21 revenues decrease.

22 Now, the state minimum standard referenced there
23 deals with the gas and says that you can't have 1.25
24 percent in on-site structures. That's a safety factor
25 from the 5 percent. They cut it by 4. And that the

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1 property boundary in the ground, you can't have 5
2 percent. This shows that 5, and 15 percent shows the
3 flammable explosive range in red. Below the 5 percent
4 the mixture of gas and air is too lean. Above the 15
5 percent, it's too rich. So the area where the great
6 danger is is in the explosive range from the lower
7 explosive limit to the upper explosive limit, between 5
8 and 15 percent. You'll hear those figures mentioned a
9 lot.

10 The overall goal of monitoring is to assess the
11 need to put in a control system and control the movement
12 of gas and to give design input when you design the
13 control system. So the selection and location of the
14 monitoring system for this gas, the probes are highly
15 dependent on subsurface geological conditions in the area
16 monitored.

17 Here's a typical multi-level gas monitoring
18 probe. This one has four levels. The depth will vary
19 with the depth of waste, and the design and construction
20 of these vary. These are put around the perimeter of the
21 landfill at or near the property boundary to monitor that
22 5 percent.

23 This picture shows one of the probes. At the
24 top of it, note the proximity of the homes. Even though
25 you're somewhat above the homes, the depths of these

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1 probes go to the depth of the waste and that could be
2 over 100, 150, 200 feet deep.

3 The primary purpose of landfill gas control
4 systems is to capture the migrating methane gas and keep
5 it within the landfill's permitted boundary because of
6 concern over its explosive nature. There are two types
7 of control systems. There are active and passive
8 systems.

9 The most common type of active system is the gas
10 extraction system. These systems use vertical extraction
11 wells. Here's a -- this slide shows an extraction well
12 for sucking the gas out on the boundary -- or I mean
13 outside the waste footprint. It's sealed at the surface
14 and has perforations below to draw in the gas. Its depth
15 varies with the depth of the waste, and note the
16 connection up above at the header pipe that then goes to
17 a blower and to a flare or some other system for using
18 the energy. These work by creating pressure gradients by
19 a negative pressure to draw the gas from around and into
20 them. So they can't cross the property boundary over the
21 5 percent.

22 I like this picture. It shows an auger rig for
23 drilling that type of well. Here's some of the
24 perforated well casing pipe that can go in those wells.
25 And there's an example of a header pipe that connects to

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1 a bunch of control wells that's running along your
2 standard landfill. Then they go through in many cases
3 through a pumping station into a blower, into a flare
4 which burns the gas. That's a ground flare, an enclosed
5 ground flare.

6 Now, this slide illustrates an entire perimeter
7 gas control system with all its components. Note that
8 the gas monitoring wells are shown in red. There are
9 also another type -- there's also another type of active
10 control system that injects air into the ground. Instead
11 of drawing the gas out, it injects the air in and creates
12 kind of a curtain or barrier to gas migration, but those
13 are very uncommon. You don't see them very often.

14 Also, passive control methods are used at the
15 boundary between the landfill and those red wells that
16 you see, but they're very uncommon too, but sometimes
17 trenches are used.

18 You can see from the complexity of this type of
19 system that it would take a long time, probably an
20 arduous and long process to get something like that built
21 and in and working properly.

22 So we get to long-term violations of gas.
23 Disposal facility owners and operators must usually spend
24 large amounts of money to correct landfill gas
25 violations. Often facilities do not have adequate funds

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1 immediately available for highly expensive corrective
2 action measures, so it takes varying amounts of time to
3 obtain these funds.

4 Because it is necessary for compliance to have
5 an adequate monitoring system, disposal sites must often
6 service or upgrade their existing monitoring systems, the
7 ones that were in red, or install an entirely new system.
8 If you don't have an adequate monitoring system, you
9 don't know if you're affecting the health and safety of
10 the public adjacent to the landfill and you don't know if
11 it's working properly, so you need a good monitoring
12 system.

13 Once an adequate monitoring system is online,
14 you must collect data over a suitable period of time and
15 evaluate it as part of an overall site characterization
16 so a proper control system can be designed by engineers
17 or engineering geologists.

18 A contractor must be then hired to design and
19 control the system. Some landfills have their own
20 contracting with their own construction capability, but
21 most have to hire that out and that means bids and
22 everything else along with that.

23 Necessary permits to construct and operate the
24 control system must be obtained from the applicable
25 regulatory control agencies like on the flare systems and

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1 things like that. Then you must hire a contractor, maybe
2 a different one or the same, to construct the control
3 system. And finally, you need to fine tune it and that
4 can take a lot of time and money, too. Sometimes
5 entities don't appropriate the money for this final step
6 and it can lead to even longer term violations.

7 The entire process to bring a landfill into
8 compliance for landfill gas violations can take many
9 months or even years, and time frames and costs are
10 specific to each facility. As you can see, landfill gas
11 control systems are complex. As a result, some entities
12 have opted for a different approach to achieving
13 compliance.

14 This approach is the one in moving the property
15 boundary. Here you have a drawing showing the old
16 boundary in red and the new boundary is kind of the
17 dotted line. Landfill gas migration is shown in yellow.
18 So obviously if you can move your boundary outside the
19 yellow, you're not going to measure levels above 5
20 percent.

21 Now as an EPA-approved state, California was
22 given the latitude to define the property boundary as the
23 permitted boundary. Because concentrations of landfill
24 gas generally decrease as the distance from the landfill
25 mass increases, you can increase the methane violation

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1 measured at the boundary to well below 5 percent by
2 moving the boundary outward from the landfill as shown in
3 this picture.

4 Of course, before the permitted boundary can be
5 moved, the Solid Waste Facility Permit must be revised to
6 include the new property boundary. Just owning the
7 property is not enough to change the boundary. A permit
8 revision may require an environmental review also. It is
9 important to note that acquiring the adjacent property
10 does not in any way control the gas migration. It only
11 moves the old compliance boundary to a new permitted
12 boundary more distant from the gas-producing landfill
13 mass. This means that all previously mentioned negative
14 environmental effects will not be mitigated on the land
15 within the new permitted boundary.

16 Now to give you an idea of the extent of this
17 issue in California, there are 176 active permitted
18 landfills at this time. Of those active landfills, 18
19 have long-term gas violations. Of the closed landfills,
20 13 have long-term violations, and of the landfills that
21 have used land acquisition or are intending to use it,
22 there are 10 in California, to give you an idea. That's
23 around 6 percent of the active landfills.

24 So that concludes my presentation. Do you have
25 any questions?

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1 BOARD MEMBER JONES: Anybody?

2 Mr. Paparian.

3 BOARD MEMBER PAPARIAN: The minimum standards,
4 are those ever reviewed? How are those set?

5 MR. BELL: The standard that we're using, that
6 we're talking about here with the 5 and the 1.25 percent
7 is based on the federal standard which we adopted when we
8 became an approved state. So it's the federal standard
9 and it has been looked at. We do have closure standards
10 which we have gone into more detail on, if that answers
11 your question.

12 BOARD MEMBER PAPARIAN: And so presumably if the
13 feds were to revise their standard, we would take another
14 look at it at that point?

15 MR. BELL: That's correct.

16 BOARD MEMBER PAPARIAN: Has any thought been
17 given to a standard that would look at the level of gas
18 at, say, the nearest residence or the nearest occupied
19 place or would that 1.25 cover that?

20 MR. BELL: Well, in a way EPA did look at that
21 when it was designing these standards way back in the end
22 of the '70s, but they felt that the property boundary was
23 a finite, easily definable place. Once you go off the
24 boundary, if you don't find gas, it doesn't tell you
25 anything. If you find it, of course it does.

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1 They have used the 1.25 percent in off-site
2 structures, but the standard doesn't technically cover
3 it. They've gone to the point of evacuating the homes
4 off-site if the levels of gas were like 500 parts per
5 million or a thousand parts per million. We're talking 5
6 percent, 50,000 parts per million. So they've evacuated
7 homes at a much lower level just to try to protect people
8 from the trace gases, but that's been more of a health
9 issue, a local issue handled in each area in a unique
10 way.

11 BOARD MEMBER PAPARIAN: Has any issue like that
12 come up in California?

13 MR. BELL: Oh, yes. Yes. In several landfills
14 there have been cases where people have been evacuated.
15 Some are closed now, like the BKK Landfill in West
16 Covina, for example. There were a number of homes that
17 were evacuated there using a thousand PPM at that time
18 for trace gases.

19 BOARD MEMBER JONES: Mr. Medina.

20 BOARD MEMBER MEDINA: What are the advantages or
21 disadvantages of a system where they pump air into the
22 landfill at the property boundaries?

23 MR. BELL: Usually -- I guess because there's so
24 few, most have felt it isn't the best way to go. The
25 disadvantage I think that detracts from it is the fact

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1 that you might start or create an underground fire
2 because you're introducing oxygen through the air into
3 the system and that's -- in fact, some systems have had
4 that and developed landfill fires.

5 Beyond that, I haven't seen a real study of
6 their effectiveness because there's so few of them. It
7 seems almost universally the active systems have gone to
8 the extraction method around the U.S.

9 BOARD MEMBER JONES: Just one -- couple of
10 questions. The percentages you gave of those that are
11 long-term violators that are trying to buy property,
12 those types of things, of the long-term gas violators on
13 active landfills, how many are privately owned and how
14 many are publicly owned? Do you have that?

15 MR. BELL: I don't have that right now. We
16 could get that for you very easily.

17 BOARD MEMBER JONES: I don't know the right
18 number, but it seemed to me there was more of the public
19 and we were trying -- part of the long-term violation
20 policy issues that drove having a stipulated order to
21 deal with the gas was to give those jurisdictions time to
22 get the funding in place, as I remember.

23 MR. BELL: That's correct. Most of the
24 long-term violation sites are on the inventory. In fact,
25 all but two are and those two are in the process of going

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1 probably shortly. So there's 16 on and there's two of
2 them that will probably go on. So we have all that data
3 readily available for you.

4 BOARD MEMBER JONES: There's 18 long-term
5 violators total?

6 MR. BELL: For active.

7 BOARD MEMBER JONES: For chronic. But I mean
8 chronic violators has 18 or 19.

9 MS. NAUMAN: 18.

10 BOARD MEMBER JONES: It's 18.

11 MS. NAUMAN: And we'll be coming back to the
12 Board I think in October for the quarterly update.

13 BOARD MEMBER JONES: And I think 16 of the 18
14 are public facilities, if I'm not mistaken. It's either
15 16 or 15.

16 MS. NAUMAN: Of the total, it is
17 disproportionate to public.

18 BOARD MEMBER JONES: Part of the thought process
19 with the policy, and I wasn't on the Board when they
20 instituted it, was to get those facilities into
21 compliance and get their permits activated or up to speed
22 to help them facilitate funding some of these long-term
23 gas violation infrastructure pieces.

24 MR. DE BIE: We'll be talking about that right
25 now.

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1 BOARD MEMBER JONES: Okay.

2 MR. BELL: No more questions? Thank you.

3 MR. DE BIE: Mr. Jones, you point out one of the
4 reasons for the policy was indeed to disconnect the
5 compliance situation and the fact that it would take a
6 very, very long time from the permit which would and
7 could be used. So say there's an increase in tonnage,
8 that increased revenue could be poured back into
9 establishing the system.

10 The other issues associated with it was at the
11 time the Board, I believe, felt that there were more
12 benefits to glean from having a permit updated,
13 certainly one that was very old, instead of holding it
14 hostage, well a gas -- a long-term gas situation was
15 rectified.

16 I wanted to update -- or not update but just
17 brief the Board a little bit on the policy itself and
18 what it contained and didn't contain and then we're going
19 to have a panel discuss it in much more detail.

20 BOARD MEMBER JONES: Okay.

21 MR. DE BIE: As John pointed out, the majority
22 of the long-term violations are for gas and that it does
23 take a significant amount of time, effort and expense to
24 get into compliance with landfill gas. And sometimes
25 while the facility is rolling into getting into

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1 compliance, it's the timing for the permit comes up about
2 the same time.

3 So the Board in '94 felt the need to set up a
4 policy that dealt with that situation and actually it was
5 the Board staff, the EA section part of the Board staff
6 that is the LEA in jurisdictions where there is no LEA
7 that brought this policy forward because they had a
8 situation that they were dealing with that would benefit
9 from this kind of policy direction.

10 Sometimes the linkage between the landfill gas
11 issue and the permit is even stronger. As John pointed
12 out, one of the strategies to deal with landfill gas
13 migration is to extend your boundaries out and you do
14 that by revising your permit. So the linkage between
15 violation and the permit are direct when it's a landfill
16 acquisition issue whereas as soon as the permit is
17 revised, they're instantly in compliance with the
18 migration or the compliance issue on the landfill gas.

19 When the Board -- when the -- the policy
20 attempted to define a couple different things on when the
21 threshold would be involved. For example, the policy
22 could be only used when there's no threat to public
23 health, safety and the environment and that it was
24 considered long-term violation if it was going to be more
25 than 90 days to fully correct or remediate.

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1 We've been talking about landfill gas, but that
2 90 days could apply to other kinds of violations or
3 compliance issues such as litter. Sometimes it takes a
4 while for some jurisdictions to really figure out the
5 best way to control litter in terms of establishing
6 litter fences or having mobile fences and purchasing
7 those things. So occasionally we've seen chronic
8 violations in the area of litter. Sometimes we've seen
9 them for drainage erosion issues, cover issues, those
10 sorts of things, but again the majority has been for
11 landfill gas.

12 When looking at the policy, the Board directed
13 staff that they need to make certain findings and that
14 was -- little bit too early. Sorry. That the -- that
15 there's no public health and safety problem, that the LEA
16 has prepared an enforcement order and that the operator
17 has a plan in place to remediate -- if it's gas, to
18 remediate the gas issue -- and that the operator is
19 making a good faith effort. Those are the findings that
20 Board staff need to make when bringing a permit up to the
21 Board and requesting them to utilize the long-term
22 violation policy.

23 Back in February, the Board staff was faced with
24 a permit coming forward for the Mariposa Landfill where
25 they didn't have an issue with gas, they didn't have an

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1 issue with litter or any other operational requirements,
2 but they were out of compliance with the financial
3 assurance requirements. They were under an enforcement
4 order from the Waste Management Board to come into
5 compliance. They had a compliance schedule. They were
6 showing a good faith effort towards coming into
7 compliance, and so the Board staff were seeing some
8 parallels between that situation and situations that had
9 been coming up before where the long-term violation
10 policy was used to deal with landfill gas.

11 So in February with that permit, the Board staff
12 suggested that perhaps the long-term violation policy
13 could be used for financial assurances, but we're
14 hesitant to bring that forward to the Board in that vein
15 lacking any direction from the Board policy-wise whether
16 that would be appropriate or not. But in making our
17 recommendations to the Board, we did -- were able to make
18 the same kind of findings for financial assurances that
19 we did with other kinds of long-term violations, that
20 there was no immediate threat, that there was a
21 compliance order and they were moving along in meeting
22 the goals of the compliance schedule and that there was a
23 good faith effort.

24 So one of the questions that we've asked the
25 panel to look at along with the long-term violation

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1 policy and its pros and cons is also looking at could,
2 should, might the long-term violation policy also be
3 useful in dealing with financial assurance issues with
4 landfills.

5 Mariposa came up in February. We have
6 information that there will potentially be some permits
7 coming up in the near future in a very similar situation
8 that Mariposa found themselves in. Permits are in
9 process, but they're also in compliance orders and may or
10 may not be in compliance when that permit comes in front
11 of the Board.

12 So we're hoping that the panel can share their
13 point of view and then seek direction on the Board on
14 that particular issue, as well as the broader issue on
15 this long-term violation.

16 Mr. Jones had asked specifically for us to bring
17 information to the Board about the acquisition aspect, so
18 we're asking the panel to look at that too. It's kind of
19 a three-part thing here that we're having the panel
20 discuss for you -- the long-term violation, the land
21 acquisition aspect, as well as the financial assurances.

22 BOARD MEMBER JONES: Before the panel goes up,
23 does anybody have any -- Mr. Paparian.

24 BOARD MEMBER PAPARIAN: Just for clarification,
25 you might have -- for landfill gas violation, long-term

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1 violation, you have something where maybe 6 percent at
2 the boundary instead of the 5 percent; right?

3 MR. DE BIE: Right.

4 BOARD MEMBER PAPARIAN: And in order to come
5 under the policy, there has to be a finding that there's
6 no threat to the public health or safety or the
7 environment. What would be a threat to the environment?
8 You obviously were answering it's not a threat to the
9 environment these facilities are out there. At what
10 point would it become a threat to the environment?

11 MR. DE BIE: Well, that's where -- we're in the
12 realm of policy and we're not in the realm of statute and
13 regs. So I think we use our discretion on what is
14 acceptable. So when we bring an item forward to the
15 Board and we as staff make a finding that there is no
16 immediate threat to public health, safety and the
17 environment, we'll share with you our findings.

18 It may be something like the property that's
19 being affected is owned by the landfill operator. It is
20 a buffer zone. There's no plans to develop it or utilize
21 it. There are no endangered species that could be
22 affected, it's not near a wetland and those sorts of
23 things. We would be looking at that.

24 BOARD MEMBER PAPARIAN: One of the items that
25 was mentioned before was the contribution of landfill

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1 gases to global climate change. It's easy to get into a
2 pretty subjective area whether it's a threat to the
3 environment or not.

4 MR. DE BIE: The regs that we operate under
5 focus our attention on landfill migration, subsurface
6 migration, and that's why it's structured to talk about
7 property boundary and percentages there.

8 The linkage between landfill gas and air quality
9 issues and greenhouse gas emissions and those sorts of
10 things because of 1220 and the separation of
11 responsibility and authority, we look to the Air
12 Districts to take action in that area. So if there's --
13 if there's -- and that could occur even if there isn't
14 lateral migration. There could be a significant amount
15 of gas coming off of the sites directly into the
16 atmosphere and affecting it, and with our authorities we
17 would not be addressing that. But the Air Districts have
18 requirements to look at that and address that.

19 Certainly in coming up with a compliance
20 strategy, be it land acquisition or control systems, the
21 Air Districts play in on what will be allowable for them
22 or not.

23 BOARD MEMBER PAPARIAN: Have we ever found
24 anything to be a threat to the public health and safety
25 and the environment?

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1 MR. DE BIE: Landfill gas, as John had
2 indicated, there were some homes that were nearby
3 landfills that were condemned and evacuated, and
4 certainly that was very clear in everyone's mind that it
5 was an immediate threat and needed to be dealt with.

6 BOARD MEMBER JONES: Mr. Eaton.

7 BOARD MEMBER EATON: Can you refresh for our
8 recollection the factual situation as it related to the
9 Mariposa situation? I thought that was a very special
10 situation, and how we get from one very special situation
11 to a leap of making a full policy on financial assurances
12 is like one that I just need to have some refreshing of
13 the facts.

14 MR. DE BIE: It was at the time in February a
15 special situation because we've never seen it, and we
16 weren't anticipating too many more coming up that way.
17 So we at the time didn't feel the need to sort of have a
18 whole policy discussion prior to that.

19 BOARD MEMBER EATON: But what were the facts?
20 Why didn't they have -- they couldn't get a bond? They
21 couldn't get a surety? They couldn't get insurance?
22 They couldn't do a pledge of revenue? What was the
23 factual situation which gave rise to the special
24 circumstances?

25 BOARD MEMBER JONES: Mr. Eaton is dead on

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1 because it's exactly -- I'll let them explain it.

2 MS. ROSALES: I'm Virginia Rosales with the
3 Permitting and Inspection Branch. That particular
4 facility is a public facility and they had just fell
5 behind with their funding. And that had occurred over a
6 period of time but they did come to the Board and try to
7 work with the Board to gain compliance and that was about
8 the time the enforcement regulations were being developed
9 by this Board for the financial assurance aspect.

10 So they had fallen behind. They were placed
11 under the stipulated order, which was an agreement with
12 both the Board and the County, and they set up a schedule
13 for them to make annual payments for that deficiency
14 along with their current annual deposit. So they were
15 making up an arrears deficiency.

16 When they did come forward, they were current.
17 They were in compliance with that stipulated order and
18 there was -- the deficiency was dropped tremendously. I
19 think it was under \$6,000.

20 MS. TOBIAS: I think they were \$6,000 out by the
21 time we approved the project.

22 MS. ROSALES: That would have been paid off
23 by -- within the next year.

24 MS. TOBIAS: The next month.

25 MS. NAUMAN: I might remind the Board that at

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1 the time you took the action to concur in the permit, I
2 think it was actually reflected in the resolution that
3 the decision that you were making on that particular
4 permit was not to be interpreted as setting precedent for
5 any future permit and an acknowledgement during the
6 discussion of the item that we would be returning to the
7 Board with further discussion about the applicability of
8 this long-term violation policy to other financial
9 assurance situations relative to permits.

10 So we looked at it as a one-time unique
11 situation, not precedent setting, allowing the Board to
12 decide in the future how to apply the policy. And that's
13 the focus of the discussion this afternoon.

14 MS. TOBIAS: That's correct. It was in both the
15 resolution and the staff.

16 BOARD MEMBER JONES: I think one of the
17 discussion points because they were within \$6,000 they
18 had a date certain to make it. And I think our
19 discussion was if they didn't make it, it would be a
20 material misrepresentation of the facts that was

21 predicated -- that the Board Members were predicated
22 their vote on. That was how we could go back on because
23 I remember Senator Roberti being real nervous about it,
24 as all of us were, and we said that material
25 misrepresentation would be cause to come back and get the

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1 permit pulled if they lied to us.

2 So there is a difference than a facility that
3 is, in my opinion, a public facility whose elected
4 officials determine that they're not going to fund
5 closure post-closure. I don't -- personally I'm not
6 going to vote for a policy that gets them off the hook
7 because that's a decision they have to make in front of a
8 whole room of citizens to pay for their obligation just
9 like everybody else does.

10 MS. ROSALES: I think it's also important to
11 mention in this particular case here that for any of
12 these facilities that are in this situation, they have to
13 be under a stipulated Notice and Order, which is
14 different than a Notice and Order. The stipulated is
15 something that is agreed to by both parties, the Board
16 and the owner/operator, where this policy wouldn't apply
17 to a facility if it were under a Notice and Order and
18 that is where the Board is directing them to specific
19 time lines and such.

20 BOARD MEMBER JONES: Going back to
21 Mr. Paparian's question, though, about the 6 percent at
22 the border, under that stipulated order would be a -- the
23 pieces that would say when they're going to start to put
24 the infrastructure together to collect the gas; right?

25 MR. DE BIE: The order may include specific time

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1 frames to complete certain tasks, and certainly one of
2 those tasks would be to have your plan in place, approved
3 and ready to implement by a date certain. Yeah.

4 BOARD MEMBER JONES: Any other? Okay. Thank
5 you.

6 MR. DE BIE: Our panel is assembled and we have
7 Scott Johnston from Merced County; Jeff Hackett, part of
8 our Board staff who actually was deeply involved with
9 establishing the policy; Paul Willman with Waste
10 Management; and Dan Avera, LEA from San Bernardino.

11 So we thought we would do a similar pattern with
12 the last panel where we have the operator begin and then
13 the LEA and then finish with Board staff. So I'll ask
14 Scott to start off.

15 MR. JOHNSTON: Good afternoon. I'm Scott
16 Johnston. I'm the Deputy Director of Public Works for
17 the Solid Waste Division of Merced County. I have the
18 rather dubious honor of addressing you today in that we
19 operate two landfills in Merced County, both on the
20 long-term violations list, both public entity projects.
21 So we have some strong feelings on this long-term
22 violation policy. It has enabled us to look at our
23 project, different ways of going about dealing with the
24 issue.

25 BOARD MEMBER JONES: Can you pull your mike

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1 closer? There's people signaling in the back they can't
2 hear.

3 MR. JOHNSTON: Is that better?

4 BOARD MEMBER JONES: That works for them.

5 MR. JOHNSTON: What it's done is given us the
6 flexibility to work with our LEA, has given us the time
7 to determine what was the best course of action, get our
8 funding set up and start the project.

9 Now, what we're doing with our landfills at this
10 point in time, we are expanding the boundaries to take
11 care of the landfill issues, and I feel that there's some
12 important aspects to that as you look at each individual
13 site on a site-by-site basis. But getting back to the
14 long-term violation policy, I think it is important that
15 we have that flexibility to work out these long-term
16 problems and work it in the public sector. 90 days
17 doesn't give you a whole lot of time to get anything
18 accomplished.

19 At our level we have a regional agency. We have
20 to go before all the city managers, on to governing
21 boards, on to Boards of Supervisors just to get a project
22 lined up, whether that is to hire a consultant to take
23 care of environmental issues, to design a project, what
24 have you. So in order for a lot of problems to be taken
25 care of in a very short period of time, the mechanisms

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1 that we have at our disposal don't fit that 90-day window
2 very well. So I think that this long-term violation
3 policy has a lot of positives for the operator to be able
4 to contend with those issues.

5 Any project that is requiring CEQA analysis,
6 we're not going to get anything done in 90 days in CEQA,
7 and so with a long-term violation policy worked out with
8 the LEA and the Waste Board that has realistic time
9 frames, that we can work under and a showing of a good
10 faith effort, I think we're all working towards solving a
11 problem.

12 I think that this -- as far as what other
13 situations should or should not apply to the long-term
14 policy, again I wouldn't like for policy to come out that
15 says you -- that situations A, B and C fall underneath
16 this but D, E and F do not because each situation is
17 different to each operator and the -- what they have to
18 work through to get to a solution to the problems. So to
19 make it too well defined I think might kind of box
20 certain operators in who are really trying to solve
21 problems that come up in the operation of a landfill.

22 As far as the land acquisition issue that was
23 brought up, we would like to discuss that just briefly.
24 In our particular instances where we're having landfill
25 gas violation problems, are on the perimeter of parts of

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1 our landfill that are unlined, they were in operation
2 since the early '70s where we really don't have any
3 buffer area, these acquisitions are creating buffer
4 areas. We're also intending to use that property for
5 future expansion we hope and we're going through the CEQA
6 process and permitting processes for those in the future.

7 Again, these sorts of issues, I believe, need to
8 be dealt with on a site-specific basis. Discussion
9 earlier was regarding landfill gas that migrates into
10 homes. We've got situations at our landfills. The Billy
11 Wright facility, which a permit will be coming forward I
12 believe next month, we don't have a house within a half a
13 mile of our boundaries, even the proposed expanded
14 boundaries, and in the direction of the gas flow there's
15 not a house within about five miles.

16 So again, looking at each particular site a
17 little more specifically would be helpful in allowing
18 certain operators to deal with issues in the manner that
19 they feel is the best course of action to take.

20 With that, I'm certainly here to answer any of
21 your questions. Thank you.

22 BOARD MEMBER JONES: Thank you.

23 MR. WILLMAN: Hi. Paul Willman with Waste
24 Management western area compliance. When Beatrice Paroli
25 asked me to do this, I kind of had a flash of deja vu

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1 because in my former life, of course, I used to deal with
2 issues like this quite often.

3 The first thing that I thought of was well, was
4 the statutory authority issue for the whole idea of does
5 a permit have to -- I mean the statute talks about the
6 permit must be consistent with state minimum standards,
7 and I went back and looked at the statutes again and I
8 didn't see anywhere in statute where it requires a
9 facility to be completely in compliance with state
10 minimum standards. So in my mind that's still an issue
11 and I want to preface what I'm going to say with that.

12 That said, I do think the long-term violation
13 policy is an excellent relief valve. It's a way to allow
14 facilities with state minimum standard violations to get
15 a revised permit, and in my mind that is consistent with
16 the statutes that I cited. I didn't cite them. It was
17 44009 and 44010 of the PRC. I mean I do think there's
18 definitely situations which arise where a state minimum
19 violation may take longer than 90 days to correct, even
20 if the operator is moving full speed ahead, as John Bell
21 indicated, especially if you're dealing with an unlined
22 site. With a lined site it's a little better situation,
23 but with an unlined site it takes even longer, especially
24 the fine tuning part that John was talking about at the
25 very end of the process.

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1 I think this policy does provide a reasonable
2 policy for accommodating those types of situations and I
3 think there's two -- just two suggested modifications I
4 would make to the policy.

5 One is a little more flexibility for the LEAs
6 regarding their enforcement options. In the existing
7 policy it talks about an enforcement order. I think that
8 a compliance schedule is an acceptable enforcement action
9 in addition to enforcement orders, and the reason I say
10 that is because the inventory of facilities that violate
11 state minimum standards, 44104 and 44106 talk about the
12 LEA having the operator under a compliance schedule. So
13 in my mind that's consistent with those statutes and all
14 these sites are on the inventory. So in my mind if the
15 operator is making good faith progress under a compliance
16 schedule, say for seven or eight months or something like
17 that, and now he needs to come forward for a permit,
18 well, he's making good progress already. Why are we
19 going to make the LEA issue a Notice and Order when
20 they're already making good progress. In my mind there
21 should be that flexibility there for the LEA so they
22 don't have to issue a Notice and Order.

23 The second suggestion is just -- the only reason
24 I would have this suggestion is because the policy was
25 developed for the EA branch, the Board working as the EA,

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1 so it talked about the determination of good faith effort
2 by the operator would be made by -- I think it said P&E
3 branch managers or something like that. I would just
4 make sure the LEA was in that loop of course.

5 Just one thing on the land acquisition issue,
6 the splitting of air issues, boundary issues are
7 typically LEA, Waste Management Board; and air quality
8 issues are of course the Air Quality Management
9 District's. And since I've been with Waste Management I
10 work throughout the state and I see a vast difference in
11 the sophistication of different AQMDs and things like
12 that, but there are federal regulations that the AQMDs
13 have to implement as far as landfill gas emissions and
14 those are called NSPS/EG. I won't get into that, but
15 suffice it to say that after seeing these regs and trying
16 to deal with them, you guys have good, clear regulations.

17 Anyway, there are thresholds that are set by the
18 feds that if you get to a certain level of gas
19 generation, period, no matter where it's going, off site,
20 staying in the ground, then you have to put a gas system
21 in. I think we can rest assured that that system will
22 actually take care of those issues, and that's why I
23 think land acquisition is an appropriate approach because
24 we say oh, well, what about the gas? Well, it's not
25 leaving the site. That's what we're concerned with and

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1 that's what the Waste Board is concerned with. The other
2 concern is with AQMD and they do have those thresholds in
3 place and you've got to put in a system. So I think I'm
4 comfortable with that.

5 BOARD MEMBER JONES: Mr. Paparian.

6 BOARD MEMBER PAPARIAN: You lost me in the very
7 beginning there about the state minimum standards not
8 applying to the facility. I'm new here, so can you
9 explain what you meant there? You started by saying
10 something about -- your caveat about the state minimum
11 standards not applying if the facility --

12 MR. WILLMAN: At the very beginning?

13 BOARD MEMBER PAPARIAN: Yeah.

14 MR. WILLMAN: The statutory authority issue?

15 BOARD MEMBER PAPARIAN: Yeah. Yeah. What do
16 you mean?

17 MR. WILLMAN: Well, 44009 and 44010 has a
18 laundry list of what the Board can object -- what types
19 of things for which the Board can object to a permit, and
20 the specific language says the permit must be consistent
21 with state minimum standards. The way I read that is
22 that the permit, the written document that the LEA is
23 proposing to issue, has to be consistent with state
24 minimum standards. It can't have things in it that would
25 be at odds with the state minimum standards the way

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1 they're written. And by extension I would say the Report
2 of Facility Information would also -- you can't propose
3 something in the Report of Facility Information that -- a
4 simple example would be you have to have daily cover.

5 The RFI says we're going to cover every week.

6 BOARD MEMBER PAPARIAN: You're not suggesting
7 that the permit -- the permit is what has to be
8 consistent with the standards and not the facility
9 itself.

10 MR. WILLMAN: That's what the statute says. It
11 never says in the statute that the facility itself has to
12 be consistent with state minimum standards.

13 BOARD MEMBER PAPARIAN: The statute also says --
14 it also makes a differentiation between state minimum
15 standards and standards, by the way, if you want to look
16 at it quite literally.

17 MR. WILLMAN: Yes.

18 BOARD MEMBER PAPARIAN: In 44010 it suggests
19 standards, and if you read the section above it you will
20 see that state minimum standards are separated from
21 standards.

22 MR. WILLMAN: A subset or separated?

23 BOARD MEMBER PAPARIAN: Separated. Separated.
24 The reasons we can object to a permit are that it either
25 does not meet state minimum standards or a laundry list

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1 of other things, and among the laundry list of other
2 things are standards. So it either doesn't meet state
3 minimum standards or a bunch of other things including
4 standards. If you start getting literal about what's in
5 there, you may be opening up some other things where you
6 may not want to go.

7 (Laughter)

8 MR. WILLMAN: That's a good point. And I don't
9 mean to say there's not a place for -- I mean I
10 certainly -- if I was a Board Member and somebody came in
11 front of me and they had a facility where they were not
12 controlling gas, they were not doing anything to try to
13 control gas, they're asking for an expansion, I certainly
14 wouldn't want to grant that and I would want something to
15 do that. You pointed out that you can look at that and
16 certainly interpret it that way.

17 BOARD MEMBER PAPARIAN: Thanks.

18 MR. WILLMAN: Good point.

19 MR. AVERA: I'll add on to that right now. I
20 disagree with Paul because -- by the way, good afternoon.
21 My name is Dan Avera and I'm with San Bernardino County
22 Environmental Health, the LEA, and in the advisory for
23 LEA advisories for writing permits and in Title 27 there
24 are specific sections that say the California Integrated
25 Waste Management Board need to make a finding that the

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1 facility is operating consistent with state minimum
2 standards. It's in Title 27. It's in the regulations.

3 In our LEA advisory it also says that the LEA
4 needs to make a finding that the facility is operating
5 consistently with state minimum standards. So that
6 presents a problem for the LEAs with the current policy,
7 and I believe that the way the current policy is written
8 it is not consistent with either statute or regulations.
9 And I believe if we are going to move forward, I would
10 recommend that we develop regulations to address gas
11 issues as long-term violation.

12 I went through the process and Mark identified
13 some other violations that could be considered long-term
14 violations, but I think gas is the one, the critical one,
15 that needs to be addressed and we have quite a few
16 regulations regarding gas and how it needs to be dealt
17 with. So I believe the appropriate course of action
18 would be to develop regulations specifically for gas.

19 The one element that I think needs to be taken
20 into consideration is the land acquisition. If there
21 currently is a violation at the property line and the
22 operator owns adjacent parcels but has to revise the
23 permit to include that property, then the permit should
24 be able to move forward. But in the findings and as part
25 of the process, the permit process, it needs to be

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1 clearly identified that a violation of gas violation
2 exists because we would be put in an awkward position and
3 Waste Board staff would be put in an awkward position of
4 saying that the facility is operating inconsistent with
5 state minimum standards.

6 There was a couple other questions on the land
7 acquisition. One of the other questions we had, should
8 the policy only apply to the long-term state minimum
9 standards violations, I believe that state minimum
10 standards were developed and are in place to protect
11 public health and safety and the environment. Why would
12 we design a policy to operate in violation? So our
13 expectation is that the operators should be in
14 compliance. We don't issue stipulated orders to have
15 them continue to be in non-compliance. Gas is a very
16 specific issue. It's a complicated long-term issue.

17 With the financial assurance, I was -- when I
18 called around and made my calls to other LEAs, I did not
19 identify any other LEAs who had even heard that there was
20 a problem with financial assurance. So I'm not sure if
21 that needs to be addressed.

22 I think one of the things I want to restate is
23 that LEAs, we have statute PRC and in some cases it's not
24 as clear as we would like it to be. We have Title 27.
25 We have Title 14. And then we have over 50 LEA

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1 advisories and now we have these other policies, the PEP
2 policy, the long-term violation policy. And one sweet
3 deal with those different mechanisms, the consistency
4 becomes more unclear for us to implement the regulations
5 and requirements on the operators.

6 Policies, I think we need to be real careful
7 about how many policies we have. If it's important, I
8 believe that they should be included in the regulations,
9 and I think that may have been part of the legislative
10 intent on some of the statutes directing the Waste Board
11 to develop regulations to address these issues.

12 That basically concludes my comments.

13 BOARD MEMBER JONES: Questions?

14 I have a question. Dan, when you -- if you're
15 doing a permit and you have to meet that threshold that
16 has this thing operated in violation of state minimum
17 standards, what do you use as the document to determine
18 if it's been in violation? Inspection reports?

19 MR. AVERA: Inspection reports. And that's --
20 if you have a follow-up question because that has
21 presented a problem. When we receive the application
22 package, we do inspections on a monthly basis.

23 BOARD MEMBER JONES: Right.

24 AVERA: We review the package, we submit it to
25 the Waste Board. We do a subsequent inspection. They're

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1 in violation. So it's after we've submitted the package
2 to the Waste Board they're in violation. We've already
3 concluded in our package a finding that the facility is
4 operating consistent with state minimum standards but
5 subsequent to that finding they're in violation, based
6 upon my interpretation of PRC and regulations, the LEA
7 cannot withdraw that package. The operator can, the
8 applicant can, but the LEA cannot.

9 BOARD MEMBER JONES: All right. So you have a
10 history of monthly inspections at a facility --

11 MR. AVERA: Yes.

12 BOARD MEMBER JONES: -- that either say the
13 facility is operating in compliance, there is an area of
14 concern or there is a violation.

15 MR. AVERA: Right.

16 BOARD MEMBER JONES: If the violation is noted
17 on the inspection report, is it your anticipation that
18 that operator will rectify that?

19 MR. AVERA: Yes. The operator knows the risk he
20 is taking by not correcting that violation.

21 BOARD MEMBER JONES: And what is that risk?

22 MR. AVERA: That the Waste Board, this Board,
23 has the ability to object to the concurrence of the
24 permit and he will not get his permit if he has a
25 violation.

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1 BOARD MEMBER JONES: If he has a history of
2 violations. If the time that the permit is allowed, is
3 around, and there are times when there are violations and
4 they've been rectified. So is it your understanding --
5 let's say there's a little violation. Let's say those
6 friendly Santa Ana winds in San Bernardino are ripping at
7 about 110 miles an hour and there is litter for three
8 miles away and some LEA writes up a litter violation,
9 the crew is not out there picking it up or whatever.
10 That stays on the books. If the litter gets picked up,
11 do you feel that he's satisfied the condition of the
12 violation?

13 MR. AVERA: Yes. We have conducted
14 re-inspections --

15 BOARD MEMBER JONES: Right.

16 MR. AVERA: -- on numerous occasions prior to a
17 permit coming forward.

18 BOARD MEMBER JONES: And you do a re-inspection
19 every month; right?

20 MR. AVERA: Yes, but we actually do a
21 re-inspection a week after the inspection as well to show
22 that they're in compliance with state minimum standards.

23 BOARD MEMBER JONES: Okay. So they get a
24 violation and you guys may even go back a week later to
25 see if they're working on rectifying it.

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1 MR. AVERA: Yes.

2 BOARD MEMBER JONES: Pretty important. Okay.

3 BOARD MEMBER PAPARIAN: I wonder if we could get
4 some staff reaction to the issue of the need for
5 regulations that was mentioned by the last speaker.

6 MS. TOBIAS: I think it's always best if all the
7 policies of any governmental agency is in regulation.
8 That's generally where policy should be, and I think
9 that's one of the reasons this is on the agenda is that
10 if the Board wants to continue with this then it would be
11 best to have it in regulations. Really, it's not an --
12 the Board can adopt a policy, but if it's not in
13 regulation then it doesn't get the protection by the
14 courts than it would if it was regulation. So I would
15 agree with that.

16 I do have one question, and maybe I totally
17 misunderstood what you were saying. Were you indicating
18 or is it your position that if there is a long-term gas
19 violation that the facility should not get an updated
20 permit?

21 MR. AVERA: No. That's not what I'm saying.

22 MS. TOBIAS: Okay.

23 MR. AVERA: I'm saying that the regulations
24 should address an issue specifically. There should be a
25 good faith effort, some enforcement action, but it should

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1 move forward. But I have a concern with it being a
2 policy.

3 MS. TOBIAS: All you're saying is you don't have
4 a concern with the substance of the policy but the fact
5 that it's not in regulation.

6 MR. AVERA: Right.

7 MS. TOBIAS: Okay. Thank you.

8 MR. DE BIE: If I may add in just my two cents
9 too. In 44009, which contains the language about a
10 permit being consistent with state minimum standards, I
11 think the policy hinges on that word "consistent" and it
12 attempts to define what's meant by "consistent." So the
13 way I view the policy as staff is that the Board
14 determined in '94 that the way they wished at that time
15 to read the word "consistent" was that there was an
16 enforcement order, that there wasn't an immediate threat,
17 that there was a good faith effort. And if those things
18 were all in place, then the Board was willing to read
19 that word "consistent" as being in place and not
20 inconsistent with state minimum standards.

21 So if it takes regulations to clarify an
22 interpretation of existing statute or reg, I'm in favor
23 of that. I think the intent was meant to clarify what's
24 meant by "inconsistent."

25 MR. HACKETT: My name is Jeff Hackett. I'm with

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1 the Enforcement Agency Section of the Waste Board. And
2 being the original author of this in the first place,
3 Mark just touched upon what the intent was with the
4 consistency.

5 What had happened back in '94 is we were coming
6 across some old '78 and '85 permits that the operators
7 had submitted, the applicants, and there was no mechanism
8 in place once they submitted that application to reject
9 that application based on a violation of state minimum
10 standards. We were trying to develop some kind of
11 mechanism or tool that could be used to go ahead and --

12 BOARD MEMBER JONES: Jeff, I want to ask you to
13 pull the mike, not even closer to you, just in front of
14 you by your name tag. I think that will pick it up
15 because I see people craning.

16 MR. HACKETT: The second point with the policy
17 is it is stated in there that we considered the facility
18 to be consistent with state minimum standards if the
19 operator was making a good faith effort. Everything was
20 kind of based, just like Mark said, on that word
21 "consistency" and it made me touch upon Dan's point a
22 little bit about the clarification of the gas control
23 requirements is in 20919.5 is it requires a series of
24 steps if the gas is identified at the property boundary.

25 So first the operator is notifying you, they're

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1 implementing a monitoring plan, and then they're provided
2 or required to submit a plan and implement that plan
3 within a certain time frame. And there's a little caveat
4 at the end of that standard that says that time frames
5 can be extended per the enforcement agency of CIWMB. So
6 there's -- the standard is pretty thorough I think for
7 the gas.

8 Personally I think it's a pretty good policy.
9 We've used it once for a particular landfill that had a
10 landfill gas violation. And I think it also provides the
11 Board an opportunity to kind of separate out the
12 permitting aspects and the enforcement aspects of things
13 where if you put a condition or something in your permit
14 that requires an operator to correct the gas violation
15 and by a specific date, what happens if that time frame
16 passes that's in that permit? Do you have to come back
17 and revise that permit again later to update that?
18 Whereas when you do the enforcement order, you can do
19 that separately. Plus the enforcement order would hold
20 them to the repercussions that are listed in the

21 enforcement order of revoking the permit, implementing
22 the fines that we talked about earlier or suspending the
23 permit temporarily. So I think it's pretty good there.

24 A couple of the cons that I've come across is
25 you could have people -- LEAs that implement the policy

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1 but there's never any follow-up on that policy. Once the
2 operator gets that permit, we kind of lose that good
3 faith effort. The second is the misuse by considering
4 short-term violations as opposed to long-term violations.
5 One in that field, I know what the Santa Ana winds mean
6 for that area and everything. It can be pretty tough,
7 but I would be hesitant to take a permit forward for
8 litter or daily cover or that kind of thing.

9 Appropriate use of long-term violation is when
10 permit action is pending the violation is truly a
11 situation where it will take an operator more than 90
12 days. Maybe we need to change that 90 days to 120 or 150
13 days. That would be a little more consistent with the
14 inventory schedules.

15 I don't believe that the policy should only
16 apply to the state minimum standards. I think the
17 financial assurances was a pretty good example,
18 especially in rural counties. And what Mike was
19 discussing earlier as far as updating the cost estimates
20 every five years, what would Modoc do if they re-did
21 their cost estimates, everything in place, and all of a
22 sudden their financial assurance is \$50,000 short?
23 There's no way they can get that money up -- that fund up
24 to par. So I think it would be useful there.

25 I also think it might be useful for closure

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1 plans in the same situation. When you have to go from a
2 public agency and contract out, go out for bid and then
3 get the designs done, that can take longer than 90 days.
4 So I think in the case of submittal of closure plans it
5 may be useful.

6 Do I see some solutions or mechanisms to
7 implement it successfully, I do. One of them is that the
8 LEAs continue follow-up on the good faith effort by an
9 operator because if they're not doing the follow-up and
10 the operators aren't making a good faith effort to meet
11 those time lines, maybe you would move to your next
12 enforcement step.

13 I think that was about all that I had on that.

14 BOARD MEMBER JONES: Any questions from the
15 Board Members?

16 I have one question. On the acquisition of
17 land, if you've got it at the border or at your boundary
18 and you buy the land and -- as Paul was saying, that
19 there's federal standards that are going to require, I
20 would assume that they would have to put a system in
21 place. What I get nervous about is the reluctance of
22 some local jurisdictions not to address the gas
23 mitigation plan as much as condemning the property next
24 door and moving onto it so that they're not in violation
25 of that standard.

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1 That makes me nervous because I don't think
2 we've dealt with the issue. I think what we've done is
3 skirted it for another administration to deal with, and
4 I'm just wondering what the environmental benefit would
5 be of letting gas migrate underground at some point to
6 a -- what really scares me on the rural ones is if
7 they're water sources for the state's water system and by
8 buying land they're able to let that gas migrate and
9 negatively affect a water source for the state of
10 California that may be dependent on that water source, if
11 that really makes a lot of sense. I'm still willing to
12 listen to lots of discussion, but I've got a little bit
13 of heartburn when people say nah, just buy more land. It
14 just doesn't make sense to me because it's not dealing
15 with the problem.

16 So I won't put you on the spot, Scott, but I
17 mean it is something I need to have a lot more discussion
18 about because I just don't think it makes environmental
19 sense on some cases.

20 MR. JOHNSTON: Just to make a quick comment on
21 that, if you have a situation where yes, we have landfill
22 gas issues and you're concerned that it's not taking care
23 of the problem, we still have it with new monitoring
24 systems on the new perimeter that if it is approved by
25 this Board, we can keep an eye on it and make sure that

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1 it doesn't pass that boundary. And you do have a very
2 good point that if you don't do anything with it, it
3 could work its way into the groundwater situation.

4 We have requirements through the Regional Water
5 Quality Control Board to sample that water on a periodic
6 basis. So if there is a release and landfill gas can
7 migrate into the groundwater and it can cause a problem,
8 we will deal with it through the Regional Board, through
9 actions that they require. So again, with this
10 separation of responsibilities you've got the Regional
11 Water Quality Control Board taking care of the water
12 quality issues, you've got the Air District Boards taking
13 care of the air issues, and you've got the Integrated
14 Waste Management Board taking care of the rest.

15 So I believe that the different problems that
16 could arise because of landfill gas are being taken care
17 of by the responsible agency.

18 BOARD MEMBER JONES: Like when we were talking
19 about permits and the need for consistency in a permit
20 desk manual, I always go back to how private operators
21 have to deal with these kinds of issues as opposed to
22 public operators that operate with a little different set
23 of rules sometimes. My own personal view because people
24 that have to make the decision to raise the rates are
25 people that have ultimate authority over the landfill.

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1 When you're a private operator and you get a set of
2 orders to put in a new system, gas system, and then you
3 can go beg the local governing parties to see if they'll
4 allow the rates to go up to help fund that work, there is
5 a different playing field. Believe it or not, there is a
6 different playing field and that always -- it scares me
7 because I don't like seeing environmental protections be
8 interpreted one way for one group and one way for another
9 group. It just seems to me they should all play under
10 the same rules. If it's good for one, it should be good
11 for all.

12 BOARD MEMBER EATON: Mr. Jones, let me ask you a
13 question. What is our exposure by the way? If for some
14 reason one of the -- in some cases how long have we given
15 them to come into compliance? Years?

16 MS. NAUMAN: Yes.

17 BOARD MEMBER EATON: So what is our exposure
18 basically if one of these should catch fire? I know it's
19 late, but it's not that silent; is it? That's the
20 question; isn't it? That's what we as a board would want
21 to set the policy based upon our exposure.

22 MS. TOBIAS: That's a very good question.

23 BOARD MEMBER JONES: So that's another one the
24 legal staff is going to get back on?

25 BOARD MEMBER EATON: That's the playing field

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1 you're talking about.

2 BOARD MEMBER JONES: Sure. That's exactly the
3 playing field I'm talking about. I think we need to look
4 at that. I think there is a need to give a local
5 jurisdiction the time, I think, to be able to get his
6 permit in place with a stipulated order that has ultimate
7 guidelines and time lines as to when to have that
8 infrastructure put in place to deal with the problem.

9 I think just issuing it and not going back and
10 checking on it to make sure they're doing it, maybe this
11 does need to be in regulation. Maybe we do need to set
12 the parameter as to whose got the responsibility to go
13 back and check and who doesn't.

14 Then I think we need -- I think Mr. Eaton's
15 question about who would have -- what would our liability
16 as a policy making board be if we granted these kinds of
17 things and whatever other questions and then come back
18 and talk about this at some point to figure out what we
19 want to do as the next step.

20 I think we need to be consistent. I think that
21 we need to personally do as much as we can to make it
22 fair for everybody.

23 Any other Board Members have questions?

24 MS. NAUMAN: I'm hearing the suggestion that
25 staff continue to work on this issue and perhaps bring

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1 some -- another policy discussion item before the Board?

2 I heard an interest in pursuing regulations. Mr. Eaton
3 had some other issues that he suggested we explore more.

4 BOARD MEMBER EATON: What I'm saying is we're
5 getting an update in October; is that correct?

6 BOARD MEMBER JONES: On chronic violators.

7 BOARD MEMBER EATON: On chronic violators.

8 MS. NAUMAN: Yes.

9 BOARD MEMBER EATON: So it would be appropriate
10 at that time to have some indication as to what a
11 preliminary opinion might be or opined as to what our
12 exposure would be.

13 MS. NAUMAN: We'll work with legal counsel on
14 that.

15 MS. TOBIAS: I can give that to you.

16 BOARD MEMBER EATON: Never ask a question you
17 don't know the answer to. You know that.

18 MS. TOBIAS: And I will get back to you.

19 MS. NAUMAN: Nor answer one you don't know the
20 answer to.

21 MS. TOBIAS: I will get back to the Board but I
22 prefer to do it in closed session. So I will be doing
23 that.

24 BOARD MEMBER JONES: Do we want to -- what's the
25 will of the Board, to just give the direction --

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1 MS. NAUMAN: Is there any direction with respect
2 to the financial assurances and the applicability of the
3 current policy to anything other than typical long-term
4 violations?

5 BOARD MEMBER EATON: I think from my personal
6 opinion is that was a rather rare exception to the rule
7 and --

8 BOARD MEMBER JONES: I would agree with
9 Mr. Eaton. It was an exception to the rule. There is
10 a -- a permit is a premium to a city and county and
11 sometimes relieving that pressure -- or a public
12 operator, a private operator, relieving that pressure by
13 giving a permit out based on some kind of a compliance
14 schedule, there was a compliance schedule in place when
15 they needed to come up with closure post-closure funding.
16 They're going to be in violation. They'll get the permit
17 revised I think once they figure out the mechanism to
18 fund the closure post-closure.

19 Some of these cases are -- some of these
20 problems are long-lasting. Sitting boards did not choose
21 to raise rates to fund it, and then it gets to the end
22 and you have \$27.35 a ton closure costs and you've got to
23 tack that onto your collection and try to do business and
24 explain to the world and that was one of my facilities.
25 So I don't want to let those cities and counties off the

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1 hook.

2 MS. TOBIAS: Mr. Jones, may I address a point I
3 think more in the whole realm of policy and not just
4 financial assurances? One of the reasons -- this was one
5 of the first issues that I dealt with when I came to the
6 Board.

7 One of the issues that I think the Board might
8 want to grapple with on this is the issue of the
9 separation, and I think some of the panel members kind of
10 alluded to it and Mark did too that this idea of the
11 separation between a permit and then enforcement, and one
12 of the things we talked about when we first -- when the
13 Board first adopted this policy is that it's important to
14 have updated permits for these facilities. It gives the
15 Board the ability to go in and regulate and make sure
16 they're up to date with these, and that one of the fears
17 or concerns which led to the adoption of the long-term
18 gas violation policy was that if we left the permits just
19 in their kind of outdated shape and said well, as soon as
20 you come in and get your gas system fixed, three years or
21 whatever it is, come back and we'll issue you a permit.
22 So the problem would have been that the permits would
23 have been out there for three years. Their tonnages
24 wouldn't be updated. They probably would be operating
25 under a Notice and Order under kind of the current

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1 approach, and there are other issues that wouldn't be
2 updated as well. So it would be anything from hours to
3 anything that we regulate.

4 So the Board at that time I think made the
5 policy determination that it was important to have
6 updated permits and that we would separate out these
7 long-term gas violations as the enforcement aspect.

8 So the only reason that I'm kind of bringing
9 this up now is one, I think it's important to understand
10 it was one of the things that drove this; but two -- and
11 I don't want to be an apologist for either side but I
12 just want to bring it up -- if it doesn't apply to
13 financial assurances as well, it is conceivable that you
14 could have facilities out there who are not able, for the
15 reasons you said and it is their own choice, to not be in
16 violation with financial assurances but then they will
17 have outdated permits as well.

18 I guess what I kind of wanted to bring up is
19 that we still have enforcement mechanisms against
20 facilities who are either out of compliance on their
21 financial assurances or anything else, and so that just
22 because we allow them to get a current permit doesn't
23 mean that we can't deal with them in terms of either
24 Notices and Orders or penalties for not being in
25 compliance with that.

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1 Again, not to refute or get away from your
2 points, which I think are well taken, but we did try to
3 make that distinction between a permitting and the
4 enforcement function, particularly on long-term
5 violations where it either takes a lot of time or money
6 to fix something.

7 BOARD MEMBER JONES: The long-term gas, I think
8 it's an appropriate policy. The buying property and
9 refusing to do the border I think is going to take more
10 discussion. But the financial assurance mechanism is an
11 interesting concept because if it's a public facility
12 they have the ability to do a pledge of revenue, they
13 have the ability to do an enterprise fund. They have a
14 lot of options at their hands.

15 If they -- I'm wondering if we've got all this
16 enforcement authority, how many of those -- how many of
17 those facilities or those operations have come forward
18 under an enforcement -- for an enforcement action at the
19 Board or did we just issue Notice and Orders. I don't
20 know. You bring it up and I'm wondering.

21 MS. TOBIAS: For financial assurances?

22 BOARD MEMBER JONES: Yes.

23 MS. TOBIAS: And I think that's certainly a
24 statistic that we could get back. I don't even know at
25 this point if it affects anyone else in the state other

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1 than the facility that we took up. It took us five years
2 to get from this policy in 1995 to a situation this year
3 that somebody couldn't -- wasn't finished coming up to
4 date with their financial assurances.

5 MS. NAUMAN: We do have some facilities that are
6 currently under Notice and Order for financial assurance.
7 Maybe staff can help me with this one, but I think
8 Kathryn is correct that the Mariposa one was the only one
9 that had actually entered into a stipulated agreement
10 with the Board and that's what made it unique. But we do
11 have other facilities whose permits have not come forward
12 but are in violation and we have issued orders.

13 MR. ADAMS: Ms. Nauman is correct. We have a
14 number of facilities that are under stipulated orders.
15 In fact, there's a couple of facilities that are in the
16 Legal Office now that the operator has signed the
17 agreements with the schedule of compliance. They're more
18 than willing to come in with steps to come into
19 compliance.

20 And as Kathryn indicated, our enforcement track
21 goes on even if this policy does not include financial
22 assurances. So as you look towards other issues to
23 update permits, if we're looking at the financial
24 assurances as one of the aspects of an operator not
25 coming in, if we use that to say well, the permit is a

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1 plum, you can't come in until you are in full compliance
2 with your financial assurances, the other issues will
3 still sit out there and linger. It may be an old permit.
4 It may be a public operator. It may be a private
5 operator.

6 The Board at the time we were considering our
7 enforcement regs was looking at this as another tool to
8 enforce and to assist operators in coming in to bring up

9 their permits for hours or tonnages or other things. And
10 Mr. Jones, you may recall you had asked us if we had
11 language in our stips that is enforcement for this Board.
12 The LEAs do not enforce financial assurances. This Board
13 does. There's language in the stips that the operators
14 have agreed to that if they don't make a payment, for
15 example, that all the monies are due and payable within a
16 certain period of time; and if they don't do that, we
17 have finding authority that they've agreed to and they've
18 also agreed to -- there's some language in there that
19 says that the Board can revoke their permit. There's a
20 whole enforcement track going on its own.

21 MS. TOBIAS: And we've been pretty vigilant I
22 have to say on the financial assurances side. That's why

23 we have a number in here on their compliance schedules.
24 I won't disagree with the fact that they're who you think
25 they are, the more rural public facilities who perhaps

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191

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1 are not making the commitment that the Board would like
2 to see.

3 So be that as it may, I just wanted to bring up
4 this issue of the fact that somebody gets a permit and
5 has a stipulated Notice and Order does not mean that
6 there is not an enforcement track that's proceeding at
7 that same time with some pretty good dates on it and
8 possible penalties.

9 BOARD MEMBER JONES: But I've never in the whole
10 time I've been on this -- and maybe it's a delegated
11 authority, but I've sure never seen one. It seems to me
12 like we're talking about policy discussions here and what
13 we want to do. Maybe the policy discussion needs to be
14 if facilities are not in compliance with financial
15 assurances and they haven't met certain deadlines, are we
16 going to shut them down.

17 MS. TOBIAS: Well, they've all made their
18 deadlines. I don't think there's --

19 BOARD MEMBER JONES: But I don't know what the
20 deadlines are. You know what I'm saying? We haven't had
21 the discussion. We're getting -- we're looking at what's
22 our authority as a Board to set policy and do this, and I
23 don't know if that was parameters that were laid out when
24 you did the policy. I don't know, but I'm wondering --
25 and I know Mr. Chandler and I have had this conversation

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1 a couple of times -- it's frustrating to hear that
2 certain facilities are not in compliance and are
3 operating with old permits or whatever, and it's like
4 what are you going to do about them. What are we going
5 to do about that. To me -- I know my point of view is
6 what the heck are we going to do. Are we going to just
7 keep letting them continue to operate without them and do
8 Notice and Orders to change them?

9 There's no -- there's no -- there's no demand by
10 this Board to make them comply because they're not in any
11 jeopardy of losing it. As long as they have the
12 wastestream and somebody issues a Notice and Order and a
13 stipulated order that increases their permitted tonnage
14 from a hundred tons a day to 200 tons a day, which is
15 going to bring in more revenue, we haven't done anything
16 except allow them not to have to do CEQA or go through
17 all the other issues. Just keep operating as normal and
18 meet these time lines to make deposits and we're not
19 going to do anything to affect you.

20 Maybe that's the right way to deal with some of
21 these jurisdictions. I don't know, but I do know that
22 landfills because of Subtitle D are closing all over the
23 north, northern California, because they can't fund
24 expansion because they have too small a wastestream. So
25 are we setting ourselves up here that as these stipulated

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1 orders are letting them bring in waste and bring in other
2 things and get the revenue and not fund that closure
3 post-closure activity at the right level, are we going to
4 end up with a shortfall when they do determine to start
5 going to out-of-state landfills and then whose
6 responsibility is it going to be to deal with those
7 issues?

8 That's part of the policy discussion we haven't
9 had, and there's some danger there for facilities that
10 don't have the money or don't have the commitment to do
11 that and that's where our exposure is. I think.

12 BOARD MEMBER EATON: I'd like to maybe ask the
13 panel members this, too, and our staff. I understand --
14 and that's the whole reason, at least going back through
15 the document here, that after ten years circumstances may
16 have changed. There are a lot of old permits out there.
17 The Board was sort of going through and trying to sort
18 of, you know, clean up after a long, long time with new
19 rules and regulations and statutes that all came into
20 play, but now we're ten years past that time. While
21 there may be still some of those that linger out there,
22 as you say the choice ten years ago was it was better to
23 try to get them to bring them in because it's a better
24 public policy. What I don't understand is -- my
25 understanding is that you review a permit every five

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1 years as an LEA; is that correct?

2 MR. AVERA: Correct.

3 BOARD MEMBER EATON: What happens if they don't
4 have financial assurances in your community?

5 MR. AVERA: The easy answer for me.

6 BOARD MEMBER EATON: Right.

7 MR. AVERA: It's the Waste Board function,
8 staff, is financial assurance.

9 BOARD MEMBER EATON: So you have no authority
10 then at that point or do you notify them? I'm trying to
11 get to Mr. Jones's point that when people say you can't
12 get them in and can't bring them in, if you review it
13 after every five years then we ought to put out an
14 advisory from our financial assurances that if you review
15 a permit and there ain't financial assurances, you notify
16 us immediately. Somewhere there's a way to get to it.

17 MR. AVERA: Well, in my -- in San Bernardino
18 County, financial assurance --

19 BOARD MEMBER EATON: I understand.

20 MR. AVERA: -- is not an issue, but if the Waste
21 Board staff notified the LEA regarding financial
22 assurance --

23 BOARD MEMBER EATON: But at one time it may have
24 been because had you public entities; correct?

25 MR. AVERA: Still.

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1 BOARD MEMBER EATON: Still a few, but -- that's
2 what I'm trying to get at is the fact that they've
3 done -- I'm trying to pull them in, and if the LEAs don't
4 have that authority when they review the permit, then we
5 ought to issue something that says if there are those out
6 there that don't, I cannot believe -- they pay us \$1.34
7 every time someone dumps there at those public entities
8 that are non-compliant with financial assurances.

9 MR. ADAMS: Correct.

10 BOARD MEMBER JONES: We hope. If they're not
11 paying the closure, why would they pay the fee?

12 BOARD MEMBER EATON: Are they paying us the fee?

13 MR. ADAMS: I assume BOE is collecting the fee.

14 BOARD MEMBER EATON: Right. So there is a way
15 for them to pledge a revenue stream at that point then.

16 MR. ADAMS: I'm not sure BOE would like them
17 pledging that revenue stream.

18 BOARD MEMBER EATON: I know that.

19 MS. TOBIAS: Maybe it would be helpful if
20 Mr. Williams could just summarize how you track the
21 financial assurances of the different entities. I think
22 what Mr. Eaton is saying how do we know when somebody is
23 out of compliance and how do they get out of compliance
24 far enough for us to be issuing Notices and Orders. He's
25 asking does that come up during a five-year permit

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1 review. If you could talk very briefly about how we
2 track that, that might be helpful for the Board to
3 understand that on financial assurances.

4 MR. ADAMS: The Board is -- basically it's a
5 Board responsibility to look at the financial assurances.
6 The Board is the enforcement authority for bringing
7 facilities into compliance, writing the notice of
8 violations, the orders, the stipulations.

9 As Diane had indicated a little earlier, in the
10 last ten years every permit that's come to this Board,
11 which cumulatively that's quite a few, we have had one
12 that has come forward with a stipulation sitting on it. We
13 aren't talking a whole lot of people at the door waiting
14 with stipulations in their hand coming to get their permits
15 revised.

16 Financial assurance compliance is probably --
17 well, as far as compliance, history is very good. Yes,
18 there are some entities, and I'll say public and private,
19 that have funding issues. It could be something as
20 simple as it's just not do they have enough money to put
21 into the account. You come in and revise a closure plan
22 and you raise your closure plan cost estimate. You are
23 instantly out of compliance with financial assurances
24 because now your funding formula, you've changed one
25 component.

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1 So it's not always just I don't have enough
2 money. You could have enough money by an engineer
3 signing a plan. That often was the case in the early
4 stages of this program. That's obviously caught a lot of
5 smaller operators off guard. They may have
6 underestimated their long-term obligations. They get
7 into a little bit more on refining their plans. They
8 revise them. They find out it's going to cost them a
9 couple hundred thousand dollars more. They're instantly
10 out of compliance.

11 When we find that out, we work with them. We've
12 been working with the operators. Those who show a lot of
13 responsibility to come into compliance, we have a very

14 good record of compliance with just notice of violations.
15 We have a number of slips on the books. We have a couple
16 Notice and Orders on the books. We have a referral to
17 the Attorney General on one facility that I can think of
18 off the top of my head for non-compliance. That was a
19 private operator who was ordered closed early. That's
20 another issue of you're instantly underfunded.

21 If another state agency or local entity orders a
22 facility closed early when you're doing any fund
23 build-up, you are instantly underfunded.

24 BOARD MEMBER EATON: But we're talking here of
25 relating the concept of long-term violations. You're

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1 speaking of situations that occur instantly that can be
2 dealt with. Do you understand? So you're telling me
3 yeah, I understand that quickly you've got to do
4 something, but we're talking about you were asked do you
5 want Board direction to take a long-term violation.
6 That's not the situation you're talking about.

7 MR. ADAMS: The long-term violation here I
8 thought was defined as 90 days, anything that would take
9 more than 90 days to correct, and often times a couple
10 hundred thousand dollars to a small jurisdiction will
11 certainly take more than 90 days to come up with. They
12 have a budget, budget years. It may take them more than
13 one year, more than one cycle.

14 BOARD MEMBER JONES: Couple hundred grand to a
15 big operator is going to take more than a couple days
16 too.

17 MR. ADAMS: We were looking at it being in the
18 context of this as anything more than 90 days is a
19 long-term violation.

20 BOARD MEMBER EATON: But the private entity
21 doesn't have the advantage of pledging public revenues
22 either. They actually have to go to a bank, they have to
23 go to an insurance company and come up with cold cash
24 with a surety bond.

25 MR. ADAMS: That's correct. They don't have the

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1 pledge of revenue available to them, but they do have a
2 financial means test available to them, which is very
3 similar.

4 BOARD MEMBER JONES: Not quite similar.

5 MR. ADAMS: Well --

6 (Laughter)

7 BOARD MEMBER JONES: Come on, Garth. I'm not
8 that illiterate of the English language, but I do know
9 the difference between those two. Okay. I think that
10 you -- are there any other comments from Board Members?
11 I'll let you tell us what you think you heard.

12 (Laughter)

13 MS. NAUMAN: We'll be coming back in October
14 with the quarterly update on the long-term violations.
15 I'm hearing from Mr. Jones that we need much more
16 discussion about the acquisition approach to landfill gas
17 migration, and perhaps an interest in -- that's really
18 the direction that I've heard so far. We're not really
19 there yet on acquisition. We'll take that on a
20 case-by-case should Merced come forward with them.

21 In terms of financial assurance, I think you
22 heard staff telling you that staff is taking a strong
23 enforcement stand on financial assurance. Those that
24 have stipulated Notices and Orders, we've dealt with the
25 Mariposa. We really haven't had others coming forward

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1 for revision where they've been under a Notice and Order.

2 I think at some point, and Garth can correct me
3 if I'm wrong, if we've got those that are currently under
4 an order from the Board and their five-year review comes
5 up, that's when the issue is going to hit is what are you
6 going to do then. So I don't see any immediate need
7 to -- for any further work with respect to financial
8 assurances.

9 The acquisition issue I think does need some
10 further discussion and we don't, to my knowledge, have
11 any of those applications pending. Then we'll return in
12 October for further discussion of the inventory and what
13 we see there in terms of facilities that are still
14 utilizing the long-term gas violation policy because the
15 remaining question is -- goes to Mr. Avera's suggestion
16 that rather than have this long-term violation policy,
17 whether there is an interest in the Board in pursuing
18 that in formal regulations.

19 BOARD MEMBER JONES: And I think two pieces that
20 don't have to come forward real quickly but that might be
21 valuable would be one that talks about those landfill gas
22 violations and where those operations are in relationship
23 to their stipulated order.

24 MS. NAUMAN: And we can do that in October.

25 BOARD MEMBER JONES: Are they meeting the

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1 deadline, are they at the plan, how long has it existed.

2 MS. NAUMAN: Right. We'll give that you detail
3 in the item. We usually have a fairly detailed matrix
4 that indicates what the enforcement action has been and
5 what the status of that enforcement action is at the time
6 we prepare the inventory.

7 BOARD MEMBER JONES: And then I think there's a
8 couple of facilities, one that I know of in particular,
9 but I think there's a few facilities that are not
10 permitted landfills -- they may be called recycling
11 centers or recycling storage centers -- that aren't
12 getting their permit because they can't fund closure
13 post-closure, and I think you probably know which ones
14 I'm talking about. If not, I'll let you know.

15 That would have an impact on what this policy is
16 because we've got -- I know we have a facility out there
17 that won't come forward with a permit because -- and is
18 arguing, and I just don't what the state of that argument
19 is, that they're not a landfill and their biggest reason
20 is because they can't do closure post-closure. We're
21 still going to have liability there.

22 BOARD MEMBER EATON: And the other direction was
23 that in closed session we're going to take up the
24 liability issue.

25 MS. NAUMAN: Right.

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1 BOARD MEMBER JONES: And you had a couple others
2 that I think were assigned to the item before; right?

3 MS. TOBIAS: It's completeness.

4 BOARD MEMBER JONES: Okay.

5 MS. NAUMAN: At this point staff has finished
6 its presentation, and I'm sure that you want to thank the
7 members of the panel for the discussion of the long-term
8 violation policy. We're now ready for public testimony,
9 if there is any. We didn't say earlier, but it helps if
10 people fill out speaker request forms.

11 BOARD MEMBER JONES: First, we do want to thank
12 all the panelists, all the panelists today that have
13 participated. Are there any folks here that would like
14 to address the Board that haven't filled out forms but
15 they could raise their hand and we could probably have
16 them fill out a form? There is Grace, Evan Edgar,
17 Mr. Mohajer, Mr. Sweetser. There are no forms back
18 there. We need a little break.

19 BOARD MEMBER EATON: Perhaps Mr. Chandler could
20 update us on the southern California meeting at the
21 same --

22 BOARD MEMBER JONES: Pardon me?

23 BOARD MEMBER EATON: Maybe Mr. Chandler can
24 give us an update as it relates to the L.A. San District.

25 BOARD MEMBER JONES: There is a little bit of

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1 news. We're going to take about a seven-minute break to
2 accommodate.

3 (Recess taken)

4 BOARD MEMBER JONES: We're going to reconvene
5 the workshop and we have the list of speakers. It's
6 going to be -- and I guess somebody put numbers on these.
7 Evan Edgar, Grace Chan, Mike Mohajer and Larry Sweetser
8 in that order. I'll leave it up to you to make it
9 happen.

10 MR. EDGAR: Thank you, Board Members. Evan
11 Edgar representing the California Refuse Removal Council.
12 I only have four points on the four slides.

13 The first slide is on page 1 about the PEP
14 policy, the use of the policy. I believe that the PEP
15 policy was designed back in 1990 for the use of
16 pre-Subtitle D landfills and a lost era and I believe
17 that there's a new era in front of us where this PEP
18 policy can be reviewed. And the PEP policy was designed
19 for older landfills.

20 I believe with the new MRFs and new recycling
21 centers and transfer stations and compost facilities,
22 there's new opportunities to look at the PEP policy. One
23 aspect of it on the use of the PEP policy is at four
24 times the PEP policy was used when there was no permit,
25 where as of 1995 AB 59 says if you have no permit, you

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1 have to issue a cease and desist. You have no
2 opportunity in order to have a Notice and Order. So
3 that's one big aspect that you can't use a PEP policy
4 when you don't have a permit at all. If you have a
5 permit, but no permit, cease and desist right off the
6 bat. That's AB 59.

7 That's a key issue because as we look at these
8 new types of facilities out there, like when the
9 recycling centers go over 10 percent residuals or other
10 issues, that if you have no permit, cease and desist. So
11 that's one aspect how the PEP policy can be upgraded for
12 the year 2000 and beyond for these diversion facilities.

13 Issue number two, on page 6 on closure plan on
14 permit issues, where Waste Board staff does not review
15 closure plans for the determination of the
16 appropriateness of cost estimates for financial
17 assurances, over the last ten years I think they do and
18 they do it to look at the reasonableness of financial
19 assurance in the cost factors. Every time I've been in
20 front of the Board over the last seven years on a
21 landfill permit, we do get a cost estimate review for
22 reasonableness. So I believe that the Waste Board staff
23 does take that opportunity, and in some cases when the
24 costs aren't reasonable, we are informed of it and we get
25 a new engineer estimate. It happened for Guadalupe last

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1 year, it happened for other landfills in the past. So I
2 believe that the staff does look at the cost estimate for
3 closure plans as the responsibility is and has been.

4 Issue number three is on page 8 under CEQA. I
5 believe staff did an excellent job on how things could be
6 and should be with regards to the CEQA process. I would
7 love to have the Waste Board staff being involved in
8 early consultation, be involved with the early aspects.

9 In fact, in many cases up north and down south,
10 we have a lot of good consultants on the private sector
11 industry who actually use the RFI, the Report of Facility
12 Information, or the TPR, Transfer Process Report, or the
13 RCSI, the Report of Compost Site Information, as the
14 project description. Early on, before you even have a
15 CUP application, we use the permitting document in a
16 format that the Waste Board staff enjoys and loves in a
17 manner that it can be reviewed under CEQA and the CUP.

18 So what was mentioned as a process we would
19 embrace. In fact, I do have a copy of the 1989 permit
20 handbook and the 1992 permit handbook and we're looking
21 forward to the year 2000 permit handbook that could
22 memorialize the CEQA process inside of there because I
23 believe it's a great process that we should all enjoy and
24 embrace because over the years I have been second-guessed
25 and third-guessed on different CEQA documents when we

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1 come in with a full project description, and sometimes it
2 could have been the lead agency not fulfilling their

3 responsibilities of the lead agency and it comes to the
4 responsible agency and they don't get the full record and
5 that's where we get second- and third-guessed. I believe
6 that would be good for the lead agencies to have that
7 training as well.

8 My last and final issue is on page 11, the
9 second slide about crunch time. Crunch time is critical
10 at the Waste Board. We get crunched all the time on the
11 clock, the 60-day clock, and I believe on crunch time
12 over the last -- from 1991 to 1998 we had the opportunity
13 to use a Permitting and Enforcement Committee. The P&E
14 Committee was a valuable resource to air out all the
15 issues before it came to the full Board. I believe the
16 P&E Committee was a great resource, a great opportunity
17 to talk about the issues, sometimes two weeks to three
18 weeks before the full Waste Board hears it, and we miss
19 that. I think the P&E Committee was something that was
20 valuable during this era, and without it crunch time is
21 real crunch time because the Waste Board only gets one
22 shot at it whereas before we had a full complement of
23 information during the P&E Committee.

24 With regards to the clock, we work with
25 completeness and correctness every day with the LEA in

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1 the field for months and months before we have an
2 official application and they do a great job on that. So
3 we have crunch time that begins years or months before
4 the Waste Board even has crunch time when we have to get
5 a facility up and running, when we have huge financing
6 terms, huge contracts to be fulfilled. So we understand
7 crunch time too, and we operate under it every day with
8 the LEA prior to the Waste Board even seeing the permit.

9 If you can bring back the P&E Committee in some
10 format, I think that would be a benefit to the full
11 Board.

12 Thank you.

13 BOARD MEMBER JONES: Thank you. Any questions?
14 I have one question of our legal staff or P&E. Maybe we
15 can just get some information.

16 If there -- if we have four facilities that had
17 no permit and we went to this policy to basically create
18 a permit for them to operate until they did put in their
19 first permit, when did that happen time-wise because if
20 it's after the AB 59 where they should have been shut
21 down, that was actually a condition that the solid waste
22 industry fought hard to make sure was included in that
23 statute, that if you're operating without a permit you
24 get shut down.

25 So I would be interested to know or -- you don't

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1 have to answer me today, but I think that it would be
2 important for the Board to see if we're, in fact, losing
3 our ability to do AB 59 because we issued a Notice and
4 Order and that would have some input, I think, on some
5 folks.

6 MR. DE BIE: The statistics that we provided
7 about the 101 Notice and Orders and all of that was from
8 '90 to '99. So AB 59 was '95. So there were five years
9 there where the requirement to do a cease and desist
10 without a permit was not clearly stated in statute.

11 BOARD MEMBER JONES: So if -- so these four were
12 prior to '95 then?

13 MR. DE BIE: That's my speculation, but we can
14 certainly make sure that's the case.

15 MS. TOBIAS: I don't recall any since I've been
16 here, I came in '94, where we would have done that and I
17 don't think I would have agreed with that.

18 I can remember one situation where we used to
19 have that provision in the statute that did allow
20 somebody who was in the process of getting a permit to
21 continue, but that language dropped out of the statute
22 several years ago. That's the only one I can think of
23 which perhaps somebody might be thinking that they were
24 treated under this long-term gas or some kind of
25 long-term violation policy as opposed to the language in

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1 that statute that dropped out. But to my recollection
2 since 1994, I don't think I would have agreed with using
3 that policy.

4 This policy was specifically brought up to deal
5 with existing permits coming back through who had a
6 long-term --

7 BOARD MEMBER JONES: This was under the PEP
8 policy?

9 MS. TOBIAS: Right.

10 BOARD MEMBER JONES: So it wouldn't have been a
11 long-term gas.

12 MS. TOBIAS: Oh, okay. Sorry. I am confusing
13 that. Well, I'm still saying I don't think we would have
14 done that without an existing permit.

15 BOARD MEMBER JONES: So we just look and see.
16 Okay.

17 Grace Chan. You made me read from the list.

18 MS. CHAN: Good afternoon, Board Members. My
19 name is Grace Chan. I'm the head of Solid Waste
20 Permitting for the Los Angeles County Sanitation
21 Districts, and I just have a few comments about
22 permitting before I get to the other things.

23 It's clear from what we've heard today and over
24 many months now that the permitting process doesn't work
25 perfectly for the Board, both in terms of the time they

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1 have to act on a permit review and act on the permit and
2 the information that they have before them, but I would
3 like to point out that there are aspects of those
4 elements that are working, and namely that we do have a
5 pretty clear list of what's required for the application
6 package. We have a pretty good idea about the
7 information that's required in the Report of Facility
8 Information. Now, that could be improved upon. I think
9 we've heard that, and perhaps the permit desk manual will
10 help in that regard.

11 On the permit desk manual, though, I would
12 strongly, strongly urge you to release that for review
13 and comment or somehow solicit open input on that
14 document because that's the only way it's going to be
15 truly meaningful and useful for all the parties involved.
16 I know some years ago in an older version, and maybe it
17 was one of the versions Mr. Jones was referring to, there
18 was -- my understanding is there was little, if any,
19 industry input on the document and there were things in
20 there that were, quote, required by the staff that we
21 were simply unable to provide and it definitely caused
22 some conflicts in the process. Any input you could get
23 before it's finalized and written in stone would be very
24 much appreciated.

25 With regard to the clock, perhaps some

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1 modification needs to be implemented on the timing, but
2 at least it's definite now and that's very important to a
3 landfill operator to have a definite time period. Often
4 times what drives our permit application is the impending
5 exhaustion of capacity or an expiration date on a permit,
6 so we work backwards on that. If we miscalculate the
7 time that it takes to get a permit, that could have very
8 serious results. So I urge you when considering changes
9 to the permit process to better suit your needs, please
10 don't compromise the aspects of those elements that are
11 working and are important for us today.

12 So that concludes my remarks on the permitting
13 process. I can answer any questions about that.

14 BOARD MEMBER JONES: I just have one. Since
15 you're in charge of permitting for the L.A. San District,
16 how much work do you think there's going to be involved
17 in changing names on existing permitted facilities? Does
18 that create a problem?

19 MS. CHAN: That's probably only part of a huge
20 amount of work that's coming our way.

21 BOARD MEMBER EATON: And a little report on the
22 financial assurances, I'm sure you have enough money.

23 MS. CHAN: I don't know now.

24 BOARD MEMBER JONES: When is your board voting?

25 BOARD MEMBER EATON: Today.

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1 MS. CHAN: I can confirm that this afternoon our
2 Board of Directors approved the acquisition of both the
3 Eagle Mountain Landfill and the Mesquite Regional
4 Landfill. We can come and give a full briefing to the
5 Board any time you wish. I can answer whatever questions
6 I'm able to answer today.

7 BOARD MEMBER EATON: We'll be down in two weeks.
8 You don't have to have much, just right down the 605.

9 BOARD MEMBER JONES: I think that -- I think
10 that L.A. County is probably pretty well served with
11 that.

12 MS. CHAN: We're very happy in terms of it fits
13 into a program that we've had for a long time in the
14 county which is to utilize local landfills to the extent
15 we can in the near term and then transition in a
16 systematic way to what is inevitably going to be complete
17 remote disposal someday in the long-term.

18 BOARD MEMBER JONES: You guys are going to get
19 into the material recovery facility business here pretty
20 quick?

21 MS. CHAN: We are currently in design, and you
22 will see the permit on the Puente Hills Materials
23 Recovery Facility.

24 BOARD MEMBER JONES: I think this month. All
25 right. Congratulations. Any questions? All right.

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1 Next up, Mr. Mohajer.

2 MR. MOHAJER: Board Members, good afternoon.

3 My name is Mike Mohajer and I'm also with Los Angeles

4 County, but the actual Los Angeles County and not

5 Sanitation District, Department of Public Works.

6 Just a little bit of background about what my
7 responsibility is, what my department responsibility is.

8 We are the lead county agency advising the Board of

9 Supervisors on waste management issues, whether it's

10 solid waste or hazardous waste. My staff and myself are

11 responsible for both hazardous and solid waste management

12 for L.A. County. We also are responsible for -- we act

13 as the building official for the Los Angeles County

14 unincorporated area of 21 cities within L.A. County.

15 This morning a couple of issues that I just
16 wrote notes over here.

17 One was the CEQA process. As Kathryn raised the

18 issue of discretionary permits, certainly this Board does

19 have that authority for the discretionary permit and the

20 CEQA does require for this Board to certainly make a

21 finding before concurring with the permit within the

22 responsibilities that this Board has. So maybe as a part

23 of addressing the deficiency that was identified this

24 morning between the Waste Board staff and the local LEA

25 staff would be that a better clarification is written in

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1 the desk manual as to what the local LEA got to look at
2 in that reference so that projects are not delayed or the
3 projects are not held as a quote, unquote, hostage. And
4 there have been a number of projects that this did happen
5 and I did check with the L.A. County LEA this morning for
6 verification. So that would be a great help.

7 Also the question was made that this Board does
8 not get involved with the CEQA process at an earlier
9 stage. Under state law, the lead agency is responsible
10 to file with the State Clearing House. The State
11 Clearing House is a state agency, and it would greatly
12 help that if the Waste Board contacted the State Clearing
13 House making sure that you are on their mailing list and
14 you do get this stuff on a consistent basis, and that
15 would expedite for this Board to be involved with that
16 CEQA process.

17 Moving away from the CEQA and going to the
18 landfill gas problem, again being responsible as both for
19 the solid waste, hazardous waste and the building
20 official, Mr. Paparian asked a couple of questions about
21 whether there was a problem with landfill gas what would
22 happen. We believe that -- my department, we are the
23 lead as far as landfill gas control in the nation and I'm
24 not talking about California, the nation. We got into
25 involvement of -- with the landfill gas and landfill gas

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1 migration because back in 1966, somewhere close to
2 Monrovia there was some closed landfill. The kids were
3 playing with matches and one of them got killed because
4 of an explosion, playing with matches.

5 Based on that, we worked with the old previous
6 federal agency that now is the EPA. We conducted a five
7 years of landfill gas migration field study for 50
8 landfills and we have established certain boundaries
9 where we do not allow any construction of structures on
10 or within 1,000 feet, and that 1,000 feet was established
11 based on, again, five years of field studies. So it
12 wasn't done overnight. Actual field studies.

13 So looking back at the issue of the boundary,
14 landfill gas migration is something that having a 5
15 percent volume in air as a limit, depending where the
16 landfill is located I would really recommend that this
17 Board take a look at it and maybe you should reduce that
18 number to 5 percent (inaudible) air because as was
19 mentioned, really as far as explosion is concerned, 5 to
20 15 percent that's the ratio you get involved. So that is
21 something that really from our standpoint is critical.

22 Looking at the lateral gas migration, the
23 off-site gas migration, land acquisition really doesn't
24 solve the problem at all. You're just delaying the
25 problem and ultimately, as was indicated, you've still

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1 got the air migration. Utilizing the passive system
2 again for the off-site gas migration, that also does not
3 solve the problem of migration.

4 Migration is a concern because based on our
5 experience, and it is my personal experience over the
6 past 29 years, is not effective. And so you basically
7 get involved with having an active system, and especially
8 when you look at the new landfills with a (inaudible),
9 which most all have a 16 mil. polyethylene so you could
10 ultimately have non-migration, lateral migration. And
11 recognizing that even though the Air Board looks at the
12 migration into the atmosphere, the environment that you
13 were mentioning, ultimately the gas moves laterally.
14 That is going to come up and migrate into the air,
15 anyhow.

16 And at least in urbanized area, if you're
17 looking for some concentration limits, our South Coast
18 AQMD has a limit where they're talking about the
19 migration to the air is -- 500 is the maximum at one
20 point and the 50 PPM is -- 50 PPM is an average and 500
21 is the maximum maybe. Looking at those limits and
22 looking at the landfill location, and we're talking about
23 the urbanized area, you can reduce that 5 percent to much
24 smaller.

25 So with that in mind, I know I'm not making a

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1 lot of people happy with what I mentioned, but I'll be
2 happy to answer any questions.

3 BOARD MEMBER JONES: Any questions? Thank you,
4 Mr. Mohajer.

5 Larry Sweetser.

6 MR. SWEETSER: Good afternoon, Board Members.

7 It's nice to be back wearing a different hat. My name is
8 Larry Sweetser. I'm assisting the Environmental Services
9 Joint Powers Authority, 21 rural county members of RCRC.

10 I'll be brief. It's a long day. You've had a
11 lot of good issues and lot of discussion on some things.
12 There's two additional points I wanted to raise that it
13 would be nice to see in the process, one on the local
14 process that goes on for permits and also for permit
15 changes.

16 I'd like to first off thank the staff for the
17 presentation and the handout they've done with this
18 document. I think they've done a really good, concise
19 and straightforward job on what the permit process is. I
20 think it's an excellent tutorial on the process that goes
21 on once it gets to the Board, all the mechanics that go
22 on of it. And if it's any sign of a good presentation, I
23 think they've made it look easy. In fact, they made it
24 look easy that after -- I've been following the Board for
25 about 10 years and about a hundred permits and I almost

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1 think I've been doing something wrong with some of the
2 issues that have come forward.

3 But the first point, the local process that goes
4 on out there. Again, the staff had excellent mechanics
5 of the Board process from the point you get it, but my
6 analogy is your baking a blackberry pie. What you see
7 many times is the pie getting ready to go into the oven.
8 You don't see all the stuff that goes into making the
9 crust or picking the berries or even getting stung by the
10 thorns or any of those things going on by the time they
11 get here.

12 With that, I think it's a need to look back,
13 step back a little bit from what you've already seen and
14 get a full dose of what's gone on in the local section.

15 The General Plan issues, the use permit, the
16 CEQA, all those things are going on well before they come
17 here, and many times when people come before the Board
18 they feel like they're going through the process a second
19 time. So if we can get you involved in the process in
20 the very beginning, I think that would help.

21 I know some of the staff have briefed the Board
22 Members on what goes on locally, so there's been some
23 things raised at some of the workshops. Some of the
24 Board Members have actually been through the process
25 themselves, but I think if you put the detail of what

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1 went on today into a presentation on that beginning
2 process, I think it would help understand what things are
3 coming from. If you could see what's going on from the
4 point somebody has a great idea of changing a facility
5 all through the local process up to the point it gets
6 submitted, I think you get the full picture of what goes
7 on. And also a lot more of these issues might get
8 resolved a lot sooner in the process than by the time
9 they get here and they get raised again. So I would urge
10 the Board to follow that approach.

11 The second issue was the permit change. We've
12 talked a lot about -- a lot of today's discussion was on
13 the permit itself and new permits and things coming
14 forward.

15 There's also the issue related to clarity when
16 somebody goes about changing a permit. A lot of us
17 aren't still clear on what the definition of significant
18 change is and when you make a change on permits, whether
19 it results in a full-blown permit change, modifications,
20 the range is pretty judgmental. I still remember one of
21 Mr. Jones' favorite examples was after 939 a number of
22 our facilities started converting over to doing recycling
23 operations and a number of them got areas of concern or
24 even violations for doing recycling because it wasn't in
25 the permit. People -- there's a lot of discussion on

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1 that and a lot of that has been resolved by now, but a
2 lot more help on what needs to be in very early and what
3 those changes are.

4 So that's the two points I wanted to raise on
5 behalf of the ESJPA. We would urge you to consider those
6 and also be glad to work with you on those issues and all
7 the rural compliance issues as well.

8 Thank you very much.

9 BOARD MEMBER JONES: Thanks, Mr. Sweetser.
10 Anybody else? No? I want to -- any Board Members have
11 anything to say?

12 I want to thank the staff. This was a very
13 informative day and I think this, combined with the
14 workshop a month or so ago, has done a pretty good job of
15 putting this picture together and we've obviously got --
16 I think you've made everybody a little more aware.

17 MS. NAUMAN: Thank you very much for your
18 participation. We have some direction from you and will
19 be reporting back to you on a periodic basis on our
20 progress on each of the items that you provided that
21 direction for.

22 BOARD MEMBER JONES: Great. Thank you all.
23 Appreciate it.

24 * * *

25

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1 STATE OF CALIFORNIA

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4 I, Terri L. Emery, CSR 11598, a Certified
5 Shorthand Reporter in and for the State of California,
6 do hereby certify:

7 That the foregoing proceedings were taken
8 down by me in shorthand at the time and place named
9 therein and was thereafter transcribed under my
10 supervision; that this transcript contains a full, true
11 and correct record of the proceedings which took place
12 at the time and place set forth in the caption hereto.

13

14

15 I further certify that I have no interest
16 in the event of the action.

17

18

19 EXECUTED this 13th day of September, 2000.

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Terri L. Emery

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